

KAMS080012542023



**IN THE COURT OF PRINCIPAL SMALL CAUSES AND SENIOR
CIVIL JUDGE & MACT, AT MYSURU**

PRESENT

SRI. AFTHAB K

Dated this the 11th day of April, 2025

MVC.761/2023

Petitioner/s

Sri. Jagadisha B. S/o. Late Basavaraju,
Age: 51 years, R/at No.3809/5, 4th main,
Tilak Nagara, Mysuru.

(By Sri. Rajashekara P., Advocate)

Vs.

Respondent/s:

1. Sri. Shivananda S/o. Gururaj R.,
Age: 25 years, R/at No.627, Raghavendra circle,
near Vijayashree Poultry Farm, Hinakal,
Mysuru. Also r/at No.208, 2nd main, B Block,
J.P. Nagara, Mysuru.
Rider of the motor bearing No.KA-11/EK-5623

2. Sri. Raghunath M.S. S/o. Srinivas M.V.,
Major, R/at No.93, Adarsha Convent road,
Malavalli town, Mandya District.
Owner of the motor bearing No.KA-11/EK-5623

3. The Manager, Oriental Insurance Co. Ltd.,
Opp to Fire Brigade, Saraswathipuram,
Mysuru city.
Insurer of the motor bearing No.KA-11/EK-5623

(R1 & 2 – Sri. G.N. Srinivasa Murthy, Advocate)

(R3 – Sri. C.K. Venkatesha, Advocate)

PARTIES TO I.A.

Applicant:

Oriental Insurance Co. Ltd.,

Vs.

Opponent:

Sri. Jagadisha B.

* * *

ORDERS ON IA No.I

The application under consideration i.e., IA-I is filed by the Respondent No.3 under Order VII Rule 11 read with section 151 of CPC seeking rejection of petition, in the interest of justice and equity.

Brief facts of the case necessary for the purpose of disposing the application are as under :

2. The petitioner has filed this petition under Section 163-A of Motor Vehicles Act, 1988, against the respondents, claiming compensation of ₹.52,00,000/- with interest at the rate of 18% per annum for the injuries sustained by the petitioner in the Road Traffic Accident which occurred on 08.07.2018.

3. In support of the application, the Deputy Manager of respondent No.3 has filed affidavit contending that the petitioner has filed the petition under section 163-A of MV Act seeking compensation for the injuries

sustained by him the RTA which occurred on 08.07.2018. Further the provision invoked by the petitioner i.e., Section 163-A of MV Act was there in unamended Motor Vehicle Act, 1988 and since the amended act has come into effect from 01.04.2022, the petition is not maintainable and hence is liable to be dismissed *in limine*. Furthermore as per the amended act, the limitation for filing a claim petition is six months from the date of accident whereas the petition is filed beyond the period of limitation. On these grounds it is prayed that the petition be rejected.

4. Upon service of copy of IA-I, the petitioner filed its objections contending that the application is not prima facie maintainable either under law or on facts and liable to be dismissed *in limine*. Further, the accident occurred prior to amendment as such the petition is maintainable. Further the application is filed with the sole intention of prolonging the matter and harassing the petitioner. On these amongst other grounds it is prayed that the application be rejected.

5. Heard the learned counsel for the applicant and opponents on IA No.I.

6. After careful perusal of the averments in affidavit accompanying the application, the following points arise for the consideration of this court :

1) *Whether the petition is liable to be rejected?*

2) *What order?*

7. Upon careful perusal of the petition averments and after giving its anxious consideration to the arguments canvassed and authorities relied upon by the counsel on either side, this court answers the aforeraised points for consideration as under :

Point No.1 : *In the negative.*

Point No.2 : *As per final order*

for the following reasons.

REASONS

8. **POINT NO.1:**

At the very outset it is incumbent upon this tribunal to clarify that the application is filed by invoking Order VII Rule 11 read with section 151 of CPC and the grounds urged by the respondent No.2 is that the petition is barred by law of limitation and also that the petition is filed after 01.04.2022 and in view of the amendment to MV Act which came into force from 01.04.2022, the petition under Section 163-A of MV Act is not maintainable.

9. In this regard it is relevant to note that as per the petition averments, the alleged accident which led to the present case occurred on 08.07.2018 as such the provisions of MV Act as it prevailed as on the date of accident would be applicable to the facts of this case. Furthermore the applicant did not draw the attention of this tribunal on any provision of M.V.Act or any other law for time being in force under which it can be held that the petition is not maintainable either under law or on facts and liable to be dismissed in limine. Perhaps the application of the respondent No.3 has no sponsors under law.

10. It is the argument of the learned counsel for the respondent No.3 that though the accident occurred on 08.07.2018 the Motor Vehicle Act came to be amended whereby the period of limitation was fixed as 6 months from the date of accident if the accident had occurred subsequent to 01.04.2022 and in case of accidents which have occurred prior to 01.04.2022 the period of limitation would be 6 months from 01.04.2022; and the petition should have been filed on or before 01.10.2022 whereas it is filed on 21.09.2022, i.e., much after lapse of the said period of limitation, the petition should be dismissed as being barred by limitation.

11. In this regard, section 166 of M.V. Act as it reads after the amendment which came into force from 01.04.2022 is reproduced hereunder:

(1) An application for compensation arising out of an accident of the nature specified in sub-section (1) of section 165 may be made--

(a) by the person who has sustained the injury; or

(b) by the owner of the property; or

(c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or

(d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be:

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application.

1[Provided further that where a person accepts compensation under section 164 in accordance with the procedure provided under section 149, his claims petition before the Claims Tribunal shall lapse.]

[(2) Every application under sub-section (1) shall be made, at the option of the claimant, either to the Claims Tribunal having jurisdiction over the area in which the accident occurred or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides, and shall be in such form and contain such particulars as may be prescribed:

3 * * * *.]*

4[(3) No application for compensation shall be entertained unless it is made within six months of the occurrence of the accident.]

5[(4) The Claims Tribunal shall treat any report of accidents forwarded to it under 6[section 159] as an application for compensation under this Act.]

7[(5) Notwithstanding anything in this Act or any other law for the time being in force, the right of a person to claim compensation for injury in an accident shall, upon the death of the person injured, survive to his legal representatives, irrespective of whether the cause of death is relatable to or had any nexus with the injury or not.]

So the provision makes it clear that no application for compensation with respect to an accident which has occurred after coming into force of amended section 166 of M.V. Act which came into effect from 01.04.2022, can be entertained unless it is made within 6 months of occurrence of the accident. Since the accident leading to the present case occurred prior to 01.04.2022 and since the petition is filed under section 163-A of MV ACT, the amended provision of M.V. Act would not be applicable to this case. The view taken by this tribunal is fortified by the decision of the Hon'ble High Court of Karnataka in *The Divisional Manager vs Sangamma and others* rendered in *MFA No.102089/2022 (MV)* rendered on 18.08.2023 where it was held thus;

11. Section 6 of the General Clauses Act, 1897 therefore, saves right of parties accrued as on the date of the cause of action arises. If any enactment is repealed, then on what date the cause of action arises, the statute is prevailing on that date is made applicable to the parties. Therefore, Section 6 of the General Clauses Act, 1897 protects right of parties, even though any amendment or repeal is made. Unless the legislature having different intention, which means making the

provision as retrospective effect the rights of parties are not affected. But that is not found in the Act No.32 of 2019 effective from 01.04.2022. Therefore, the claimant's right accrued to prefer the claim petition on the date of accident that is on 27.07.2010 and at that time, there was no limitation prescribed and this non-existence of limitation is saved by Section 6 of the General Clauses Act, 1897. Therefore, this Court is of view that the applicability of the Act No.32 of 2019 that is re-introduction of the old provisions of Sub Section (3) of Section 166 would have prospective effect only and the limitation period of 6 months is applicable after introduction of the amendment with effect from 01.04.2022. To make it more clear if any accident occurred prior to 01.04.2022, the provisions of amendment to the Act prescribing time limitation is not applicable. This amendment made with effect from 01.04.2022 is applicable in case where the accident occurred subsequent to 01.04.2022. Therefore, the party's right is governed by to prefer claim petition after 01.04.2022 if the accident occurs after 01.04.2022.

22. Therefore, for the aforesaid reasons, claim petition is very well maintainable. As the accident was occurred on 27.07.2010, in the present case, the claim petition is filed on 07.02.2020 that is prior to 01.04.2022 on which date the Act i.e. Act No.32 of 2019 came into force, therefore, governing principle is that, when the cause of action arises to the parties and on that day what the law prevails that right is accrued to the parties as per Section 6 of the General Clauses Act, 1897. Therefore, the claim petition filed by the claimants, even after more than 9 years is maintainable and that is what correctly considered by the Tribunal and granted the compensation.

Hence, the argument of the learned counsel for the respondent No.2 that

the petition is barred by limitation has to fail. Similar view is taken by the Hon'ble High Court of Kerala in *Sathy and others Vs. Dileep I.S. and others* rendered on **01.06.2022**, in which the Hon'ble High Court of Kerala was dealing with an appeal arising out of an order of dismissal of the petition as barred by limitation in view of the amended provisions of Order VII Rule 11 read with section 151 of CPC and the *ratio decidendi* of the Hon'ble High Court of Kerala is as follows:

10. Since while introducing the Act of 2019 effective from 1.4.2022, Legislature did not cause any amendment in the repealing and savings clause specifying its applicability in respect of the accidents occurred prior to the introduction of the amendment, in view of the provisions of Section 6 and the observations of the Supreme Court in the judgment in State of Punjab and others v. Bhajan Kaur and others (supra), I am of the view that the applicability of the Act i.e., introduction of the old provisions of subsection (3) of Section 163-A, would have a prospective effect and the limitation period of six months would apply after introduction of the amendment i.e., post 1st April 2022. In other words, in any accident occurred after 1.4.2022, provisions of the amendment caused in the Act prescribing the limitation to entertain a claim petition, the parties would be governed by the same but not in respect of the persons whom a right had already accrued and was available if the amendment had not been caused. For the reasons aforementioned the impugned order is set aside. Original petition is allowed. The MACT is directed to entertain the claim petition preferred and try the case on merits.

The above excerpt makes it clear that the amended provisions cannot be given retrospective applicability and shall not apply to accidents which

occurred prior to 01.04.2022. Since the alleged accident leading to the present case, as per the petition averments, is said to have occurred on 08.07.2018 the amended provisions cannot be made applicable to the facts of this case. Viewed from any angle, the application merits dismissal. Hence, *point No.1 is held in the negative.*

12. **POINT NO.2:**

In view of the findings of this court on Point No.I, this court answers the point No.II as under, by passing the following:

ORDER

*“IA No.I U/O VII Rule 11 of CPC filed by
the Respondent No.3 is hereby dismissed.*

Parties to bear their own costs.”

(Directly typed by stenographer, corrected by me and then pronounced in the open court on this the 11th day of April, 2025)

(AFTHAB.K.)
Prl. Judge, Court of Small Causes
& MACT., Mysuru.