

KAMS080001282023



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

PRESENT

SRI. AFTHAB K

Dated this the 22nd day of April, 2025

MVC.72/2023

Petitioner/s

1) Sri. V.N. Parashivamurthy S/o. Nagarajappa,
Age: 41 years,

2) Sri. Nagendra S/o. V.N. Parashivamurthy,
Age: 8 years,

3) Sri. Shashank S/o. V.N. Parashivamurthy,
Age: 1 year,
since petitioners No.2 and 3 are minors, represented by
their natural guardian father,
Sri. V.N. Parashivamurthy i.e., petitioner No.1.

All are r/at Vaddarahundi village, Biligere hobli,
Nanjangud taluk, Mysuru district.

(By Sri. Shivaramu A.S., Advocate)

Vs.

Respondent/s:

1. Sri. Rakshith P.R. S/o. Rangaswamy,
Age: 31 years, R/at D. No.13/1, Shivayogiswamy,
2nd main road, Gandhinagar, Mysuru.

Driver of the car bearing No.KA-09/ME-5510

2. Sri. Ashwinkumar G. S/o. Gavisiddaiah,
R/at No.16, 3rd cross, 1st main, Alahanalli,
Giridarshini Layout, Mysuru.
Owner of the car bearing No.KA-09/ME-5510

3. Magma HDI General Insurance Co. Ltd.,
II floor, No.2916, Katharaja Urs road,
Mysuru.
Insurer of the car bearing No.KA-09/ME-5510

(R1 & 2 – Sri. M. Mahesh, Advocate)

(R3 – Smt. K.L. Sugandhi, Advocate)

PARTIES TO I.A.

Applicant:

Magma HDI General Insurance Co. Ltd.,

Vs.

Opponent:

Sri. V.N. Parashivamurthy and another

* * *

ORDERS ON IA No.I

The application under consideration i.e., IA-I is filed by the Respondent No.3 under Section 166(3) of Motor Vehicles Act seeking rejection of petition on the ground of limitation, 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 166 of Motor Vehicles Act, 1988, against the respondents, claiming compensation of ₹.85,65,000/- with interest at the rate of 12% per annum for the injuries sustained by the petitioner in the Road Traffic Accident which occurred on 27.08.2021.

3. In support of the application, branch manager of Respondent No.3 company has filed his affidavit contending that the accident leading to the present case occurred on 27.08.2021 whereas the petition is filed on 09.01.2023 as such the petition is barred by law of limitation in view of amended provisions of Section 166(3) of Motor Vehicles Act, as the petition is filed after the lapse of 6 months from the date of occurrence of the accident. 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 application is filed when the petition stands posted for leading petitioners' evidence, as such the application is liable to be dismissed. Further the application is devoid of merits as such the same may be dismissed. Further the application is filed with an intention to drag the matter. Further, the applicant has not approached the court with clean hands as such the applicant is not entitled for any relief. 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 :

<i>Point No.1</i>	<i>:</i>	<i>In the negative.</i>
<i>Point No.2</i>	<i>:</i>	<i>As per final order</i>

for the following reasons.

REASONS

8. **POINT NO.1:**

At the very outset it is incumbent upon this tribunal to clarify that though the application is filed by invoking Section 166(3) of Motor Vehicles Act, but technically the provision that the Respondent No.3 is seeking to invoke here is Order VII Rule 11 (d) of Civil Procedure Code, and the grounds urged by the Respondent No.3 is that the suit is barred by law of limitation in view of amended provisions of Section 166(3) of Motor Vehicles Act.

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 27.08.2021 and the petition is filed on 09.01.2023. Hence it is clear that the petition is filed after the lapse of 6 months from 01.04.2022. But the question is where the accident had occurred prior to 01.04.2022, can the petition be dismissed by applying the amended provisions of section 166 (3) of Motor Vehicles Act retrospectively. Further, as rightly argued by

learned counsel for the petitioner, as far as the accidents which have occurred prior to 01.04.2022 are concerned, there is no period of limitation and the argument of the learned counsel for Respondent No.3 that period of limitation in such cases would be 6 months from 01.04.2022 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 27.08.2021 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 09.01.2023, i.e., much after lapse of the said period of limitation, the petition should be dismissed as being barred by limitation. The learned counsel for respondent No.2 seeks to support his argument with the decisions rendered by :

a) The Hon'ble Madras High Court in *Santi and others Vs. Suresh and another* in *CRP (PD) No.4066/2022* rendered on 17.11.2022.

b) decision of the Hon'ble Apex Court in *ICICI Lombard General Insurance Co. Ltd. Vs. Ayiti Navaneetha and others* rendered in *Petition(s) for Special Leave to Appeal (C) No(s).8412-8413/2023*,

c) *Cholamandalam General Insurance Co. Ltd., Vs. Shree Lakshmi T and others* rendered in *Petition(s) for Special Leave to Appeal (C) No(s).9152//2023*

d) *Universal Sompo General Insurance Co. Ltd., Vs. Akshay Raj and others* rendered in *Special Leave Petition (Civil) Diary No(s).22696/2023*

e) the decision of the Hon'ble High Court of Telangana in *Smt. Ayiti Navaneetha and another Vs. The Union of India and others* rendered in *WP No.1395 and 1396 of 2023* rendered on **06.03.2023**.

f) decision of III Addl. District and Sessions Court, Mysuru in *Mahesha Vs. Head Master, Samdura Public school and another* rendered in *MVC.90/2023* rendered on **15.09.2023**,

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, 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 Section 166(3) of Motor Vehicles Act 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 166, 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. As the view taken by the Hon'ble Kerala High Court is in consonance with the view taken by Hon'ble High Court of Karnataka and as the judgment of Hon'ble High Court of Karnataka is a binding precedent to this court whereas the decision of the Hon'ble Madras high court which is contrary to view taken by Hon'ble High Court of Karnataka only has persuasive value, it is held that, with respect to the decision cited, the decision of Hon'ble Madras high court is not binding on this court. As regards the other decisions cited by the learned counsel for the respondent No.2, the same pertain to the questions which have no relevance to present case, as the accident leading to the present case occurred prior to 01.04.2022 and the Hon'ble High Court of Karnataka has already clarified the position of law regarding retrospective applicability of the amendment. Since the alleged accident leading to the present case, as per the petition averments, is said to have occurred on 27.08.2021, 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 read with Section 166(3) of MV Act 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 22nd day of April, 2025)

(AFTHAB.K.)

Prl. Judge, Court of Small Causes
& MACT., Mysuru.