

KAMS080043042023



**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 3rd DAY OF APRIL 2025

MVC/ 2367 /2023

Kavitha and others ... **Petitioners**

-Versus-

Bandenavaja Julafakira
Yadavada & others ... **Respondents**

I.A.

ICICI Lombard General Insurance Company Ltd., : **Applicant/Respondent**
No.3

-Versus-

Kavitha and others : **Opponents/Petitioners**

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 reasons mentioned in the affidavit.

2. In the accompanying affidavit the Legal Manger of respondent No.3 company by name Gururaj Shetty submitted that, the alleged accident occurred on 11.05.2023. The petition came to be filed on 02.12.2023 i.e., after 06 months from the date of accident. 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 petitioners have filed this petition against the respondents for death compensation of the deceased who died in a road traffic accident. The petitioner No.1 has approached the jurisdictional police for certified copies of documents, but the jurisdictional police have refused to give the necessary documents by giving one or the other reasons. Hence they could not contact their counsel to give information to file claim petition. This application filed by the respondent No.3 company is not maintainable and only to drag on the proceedings. Hence prays to dismiss the application with cost.

4. Heard arguments of both side. Perused the 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 (the) 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:

R E A S O N S

7. **Point No.1:** The petitioners have filed this petition seeking death compensation of the deceased who died in the road traffic accident. It is the contention of respondent No.3 that the alleged accident occurred on 11.05.2023. The petition came to be filed on 02.12.2023 i.e., after 06 months

from the date of accident. 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. On the other hand, the petitioners contended that, the petitioner No.1 has approached the jurisdictional police for certified copies of documents, but the jurisdictional police have refuse to give the necessary documents by giving one or the other reasons. Hence they could not contact their counsel to give information to file claim petition.

8. Admittedly, as per Sec.166(3) of MV Act the petition has to be filed within six months from the date of the accident. 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 mixed question of

law and facts, 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 tribunal 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, corrected and then pronounced by me in the open Court, on this the 3rd day of April, 2025)

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