

KAMS200005192024



IN THE COURT OF THE SENIOR CIVIL JUDGE AND
JMFC, H.D.KOTE

Dated This 19th day of December 2024

PRESENT:

Sri. Mahesh B.T.,
B.Com., LL.M.,
Senior Civil Judge and JMFC,
H.D.Kote

MVC.No.2749/2024

Petitioner :- Sri.Narayana

V/s

Respondent :- Pradeepa & Others

*** * ***

I.A.No.III

Applicant :- Bajaj Allianz General Insurance Com.,
- - (Respondent No.3)

V/s

Opponents :- Sri.Narayana
- - (Petitioner)

*** * * ***

IA.No.III filed under Oder VII Rule 11(d) R/w 151 of CPC and R/w Sec.166(3) of M.V.Act-2019.,

The applicants/Respondent No.3 filed the application to reject the claim petition as suit is barred by law of limitation as the accident has occurred on 05.11.2023, but the petition is filed on 10.12.2024 after expire of 13 months 5 days. in the interest of justice.

2. The respondent No.3 has sworn to an memorandum of facts to the said application and submitted that, the petition is filed by the petitioner seeking compensation for the injuries sustained by him in the accident. It is submitted that, the alleged accident was occurred on 05.11.2023, but the petition is filed on 10.12.2024 after expire of 13 months 5 days. Hence, there is an inordinate delay 7 months 5 days in filing the claim petition as specified under the provision of Motor Vehicle Act. As per the Section 166(3) of Amended Provision of MV.Act 2019, “ No application for compensation shall be entertained unless it is made within six months of the occurrence of the accident. Hence, the claim petition is barred by limitation. Since the delay in filing claim petition is not tenable and not maintainable in the eyes of law. Hence this application.

3. The opponent/petitioner has filed objections and contended that, the application filed by the respondent No.2 is not maintainable either in law or on facts. Further it is contended that, after taking the treatment at the hospital he has filed the petition for the injuries sustained by him. Further it is contended that, the Hon'ble Apex court also directed not to dismiss the motor vehicle cases on the ground of the limitation. Hence, the petitioner has prayed for dismissal of the application.

4. The following points arise for my determination:

(1) *Whether the plaint averment reveal that the plaint has to be rejected ?*

(2) *What order ?*

5. Heard the written arguments of the both the counsel.

6. My findings on the above points are as under:

Point No.1 : *In the Negative;*

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

REASONS

7. **Point No.1** : The petitioner has filed the present petition seeking the compensation for the injury sustained by him in the accident which occurred on 05.11.2023, but the petition is filed on 10.12.2024 after expiry of 13 months 5 days. Hence, there is an inordinate delay of 7 months 5 days in filing the claim petition as specified under the provision of Motor Vehicle Act. As per the Section 166(3) of Amended Provision of MV.Act 2019, “ No application for compensation shall be entertained unless it is made within six months of the occurrence of the accident.

8. So far as rejection of plaint is concerned, it is dealt under Order 7 Rule 11 of CPC. Order 7 Rule 11 of CPC is reproduced for better understanding.

“11.Rejection of plaint – The plaint shall be rejected in the following cases:

- (a) Where it does not disclose a cause of action;*
- (b) Where the relief claimed is under valued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;*

(c) Where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped and the plaintiff on being required by the Court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so;

(d) Where the suit appears from the statement in the plaint to be barred by any law;

(e) Where it is not filed in duplicate;

(f) Where the plaintiff fails comply with the provisions of Rule 9

9. In the above said provision it states that, if the plaint does not disclose a cause of action and if it appears that the statement in the plaint is barred by any law and for that matter barred by limitation then, the plaint has to be rejected.

10. This Court would rely on the decision of Apex Court in

(2004) 9 SCC 512 (DB) in Liverpool & London S.P. & I Association Ltd., –V/s- M.V.Sea Success I and another.

On perusal of the said citation the Hon'ble Apex Court has held that:

“Cause of action is a bundle of facts which are required to be pleaded and proved for the purpose of obtaining relief claimed in the suit. The material facts required to be stated but, not the evidence. Whether a claim discloses a

*cause of action or not is essentially a question of fact. Whether it does or does not disclose cause of action must be found out from reading the plaint itself. The plaint averment has to be read in entirety. It is further held that, in ascertaining whether the plaint shows a cause of action, the Court is not required to make an elaborate enquiry into doubtful complications question of law or fact. So long as the claim discloses some cause of action or raises some questions fit to be decided by a judge mere fact that, the case is weak and not likely to succeed is no ground for striking it out. It has further held that, if the averments made in the plaint or documents relied upon disclose a cause of action then, **the plaint should not be rejected merely on the ground that the averments are not sufficient to prove the facts stated therein.**"*

11. Here this Court would like to rely on the decision of **the Hon'ble Apex Court in 2006 AIR (SC) 3672 (DB) (Ramesh B.Desai and others –V/s- Bipin Vadilal Mehta and others)**, wherein it has been held that,

"Rejection of plaint on ground of limitation – Held :

- (i) A plea of limitation is a mixed question of law and fact – Therefore unless it becomes apparent from the reading of the petition that the same is barred by limitation the petition cannot be rejected under Order 7 Rule 11(d) of Civil Procedure Code.*
- (ii) In order to examine whether the plaint is barred by any law, as contemplated by sub-rule (d) of Order 7*

Rule 11 Civil Procedure Code, the averments made in the plaint alone have to be seen and they have to be assumed to be correct. It is not permissible to look into the pleas raised in the written statement or to any piece of evidence.”

12. Here this Court would also like to refer to decision of

Hon’ble Karnataka High Court in ILR 2016 KAR 2429 in Smt.N.Triveni V/s G.T.Shankar.

In the said case it has been held that,

“while considering the application under Order 7 Rule 11 of CPC, the Court has to examine the averments in the plaint and the pleas taken by the defendant in the written statement are irrelevant. Further, it has held that, it is the averments made in the plaint that have to be read as a whole to find out whether it discloses a cause of action or whether the suit is barred under any law. At the stage of exercising the power under Order 7 Rule 11 of CPC, the case of the defendant stated in the written statement or in the application filed for rejection of the plaint is immaterial. It is only if the averments in the plaint ex-facie do not disclose a cause of action or the suit appears to be barred under any law, the

plaint can be rejected. Otherwise, the case of the parties has to be adjudicated by conducting the trial.”

13. In the above said citation it has been held that, so far as limitation is concerned, only if from the bare reading of the plaint if it is barred by limitation then, the plaint has to be rejected. On the other hand, if the limitation is a mixed question of law and fact then, it cannot be rejected under Order 7 Rule 11 of CPC. Further held, while considering application under Order 7 Rule 11 of CPC., only the plaint averment has to be looked into and not the defence taken by the defendant in the written statement. Further, it has been held that, cause of action is a bundle of facts which gives right to a party to file a suit. On reading entire plaint, if there is a triable case even if it is a weak case then, it is said that, there is a cause of action to proceed with the suit.

14. Now coming to the case on hand it can be seen that, the respondent No.3 has filed an instant application praying to dismiss the claim petition as it is barred by limitation as the accident occurred on 05.11.2023, but petitioner has filed on 10.12.2024 after expiry of 13 months 5 days. Further it is to be noted here that, as

per the recent amendment for the act, it clearly states that under the provision of motor vehicle act as per the Sec.166 (3) of amendment provision of M.V.Act-2019 “ no application for compensation shall be entertain unless it is made with in 6 months of the occurrence of the accident”. The counsel for the petitioner/opponent in his objection clearly stated that, the M.V.Act is a beneficial legislation and Hon’ble Appex Court in his recent orders clearly directed the MACT Tribunals not to dismiss the accident claim petition on limitation. Hence, he has prayed for the rejection of the application. It is to be noted here that, as rightly stated by the petitioner/opponent the M.V.Act is a beneficial legislation brought by the Government for the person who sustain injuries in a road accident. Now, as per the new amendment U/Sec.166 (3) of amendment provision of M.V.Act-2019 clearly says that, no application for compensation shall be entertain unless it is made with in 6 months of the occurrence of the accident, but Hon’ble Appex court ***has stayed the operation of Section 166(3) of the Motor Vehicles Act, which imposed a six-month limit for filing accident claims. Tribunals and High Courts have been directed not to reject petitions solely due to delay.*** Hence, application filed by the respondent No.3 doesn’t survival for the consideration. As per the above

said direction by the Hon'ble Appex Court. Hence, for the above said reasons. **Point No.1 is answered in the Negative.**

15. **Point No.2:** Based on findings in Point No.1, proceed to pass the following:

ORDER

I.A No.3 filed by responded No.3
under Order 7 Rule 11(d) R/w Sec.151
of C.P.C., R/w Sec.166(3) of amended
Motor Vehicle Act-2019 is hereby
rejected with cost of Rs.200/-

Sd/-

**Senior Civil Judge & JMFC.,
H.D.Kote**