

KAUP020038052023

**IN THE COURT OF ADDL.SENIOR CIVIL JUDGE AT UDUPI.**

Present: **Sri. Santosh Srivastava** B.A., LL.B.,  
Addl. Senior Civil Judge, Udupi.

Dated this the 20<sup>th</sup> day of January, 2025

**M.V.C.No.858/2023*****Between:***

Mr. Sushanth Puthran ... Petitioner

AND

Mr. Mehaboob N. and another ... Respondents

***In I.A.No.I******Between:***

Mr. Sushanth Puthran ... Applicant/ petitioner

AND

1. Mr. Mehaboob N.
2. The Chola MS Gen. Ins. Co. Ltd. ... Opponent/respondents

(P - Rep. by Sri. S.A., Adv.)  
(R1 -Exparte)  
(R2 - Rep. by Sri. P.R., Adv.)

i.	Provision under which the application is filed	Sec.5 of Limitation Act
ii.	Relief sought for	Condonation of delay
iii.	The date on which the application is filed	18.08.2023
iv.	Number of the application	I.A.No.I
v.	The date on which the objections are filed by opponent	15.05.2024
vi.	The date on which the orders were passed on the said application	20.01.2025

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The petitioner has filed application under Sec.5 of Limitation Act seeking to condone delay of 78 days in filing the claim petition and grant such further reliefs in the accompanying affidavit the petitioner submits that he is suffered accidental injuries and after the accident he was unable to travel due to severe injuries and thus he could not contact any of the Advocate to file the claim petition. Hence there is a delay of 78 days in filing the petition.

2. On the other hand the respondent No.2 has filed statement of objections and submits that Sec.5 of Limitation Act does not attract because it is neither Miscellaneous Appeal nor Regular Appeal and as per one

of the judgment of Hon'ble Supreme Court the said application is not maintainable.

3. Heard on both sides. Peruses the records. Wherein the records disclose that accident took place on 04.12.2022 which is not disputed by the respondent No.2. It is submitted in the affidavit that petitioner due to inability to contact his Advocate resulted in filing of this claim petition delay. It can be understood commonly that after the accident the petitioner or any person will normally undergo treatment at the hospital, so by sound understanding it can be validly presume unless shown contrary that the petitioner was unable to file the claim petition in time. Hence for this reason the petitioner has filed application to condone the delay in filing the petition.

4. Further this court has perused the Sec.166(3) which reads that no application for compensation shall be attained unless it is made within 6 months from the occurrence of accident. This court likes to place reliance upon the **Pathapati Subba Reddy (died) by LRs and Ors V/s Special Deputy Collector 2024 Live Law Supreme Court 288** held that, *Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is*

*established for various factors such as, where there is inordinate delay, negligence and want of due diligence”.*

5. Further made guidelines which are as follows:

*26. On a harmonious consideration of the provisions of the law, as aforesaid, and the law laid down by this Court, it is evident that:*

*(i) Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;*

*(ii) A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;*

*(iii) The provisions of the Limitation Act have to be construed differently, such as Section 3 has to be construed in a strict sense whereas Section 5 has to be construed liberally;*

*(iv) In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act;*

*(v) Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various*

*factors such as, where there is inordinate delay, negligence and want of due diligence;*

*(vi) Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal;*

*(vii) Merits of the case are not required to be considered in condoning the delay; and*

*(viii) Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning the delay for the reason that the conditions have been imposed, tantamount to disregarding the statutory provision.*

6. Having perused the said judgment the discretion need to be exercise to fulfill the purpose of the said act and in this type of case it is common knowledge that majority of the claimants for such compensation are ignorant about the period during which such claims preferred. Even in case if victims escapes death some of such victims are hospitalized for months, if not for years. So therefore if this application is dismissed on this sole ground of Limitation then the petitioner would be heavily deprived off claiming compensation to rehabilitate his life. Finally which is supported to him under the scheme of the act. So therefore though there is delay in filing the claim

petition. But on perusal of the affidavit and records of the case. At this stage, the court is of the opinion to condone the delay and permit the petitioner to file the claim petition which will be decided on merits. So therefore this court proceed to pass the following:

**ORDER**

Application filed under Sec.5 of the  
Limitation Act stands allowed.

Delay stands condoned.

Claim petition taken on record for  
disposal on merits.

(Dictated to Stenographer, transcribed by her,  
corrected and then pronounced by me in open court on  
this the 20<sup>th</sup> Day of January, 2025)

**(Santhosh Srivastava)**  
Addl. Senior Civil Judge and A.C.J.M.,  
Udupi.