

KAUP020005632025



***BEFORE THE ADDITIONAL MOTOR ACCIDENTS
CLAIMS TRIBUNAL & PRINCIPAL SENIOR CIVIL
JUDGE AND CJM., UDUPI.***

Present: Sri.M.Purushothama,
B.B.M, M.S.W., L.L.M.,P.G.D.H.R.M.

Prl. Senior Civil Judge & CJM., Udupi.

Dated this the 1st day of December, 2025

MVC No. 88/2025

Petitioner : Smt. S.Malathi,
Aged about 46 years,
D/o. B.Janardhana Devdiga,
W/o. K.Suresh Sherigar,
R/at.H. No.11-1-59G4,
“Chinni complex”,
Mudanidamburu,
Shiribeedu,
Udupi taluk and district,
PIN: 576 101.

(Rep.by Sri.A.K.A., Advocate)

-Vs-

Respondents : 1. M/s. Kohinoor Sea Foods,
Rep. Through its
Managing Partner,
Mr. K. Sunhail,
Aged about 51 years,
17/42, Paduthonse,

Perlakady,
Hoode,
Udupi - 576 115.

2. The Manager,
HDFC ERGO General Insurance Co.Ltd.,
1st Floor, Virupaksha Krupa,
Opp: Kims Main Gate P.B. Road,
Vidyanagar, Hubli – 580 021.

**[Rep.By Sri.M.R., Advocate for R1
R2 : Placed exparte]**

In I.A. No.I

Smt. S. Malini : **Petitioner**

Vs.

1.M/s.Kohinoor Sea Foods
2. HDFC ERGO General Ins. Co.Ltd.: **Respondents**

In I.A. No.II

HDFC ERGO General Ins. Co.Ltd : **Applicant**

Vs.

Smt. S. Malini : **Opponent**

Order on I.A. No.I & II

The petitioner has filed an application under Section 5 of the Limitation Act and prayed this court to allow the petition by condoning the delay of **449 days** in filing the claim petition.

2. The respondent No.2 filed application u/o.VII Rule 11(d) and Section 151 of CPC to reject the claim petition on the ground that the application is not filed well within time as contemplated under Section 166(3) of IMV Act and the application is filed belatedly.

3. On the other hand petitioner has filed objections to I.A. No.II filed by the respondent No.2 u/o.VII Rule 11(d) of CPC.

4. Heard arguments. Perused the entire materials available on record.

5. The points that would arise for my consideration are;

*1. Whether the petitioner shown sufficient grounds to condone the delay of **449 days** in filing the claim petition u/s.5 of Limitation Act?*

2.Whether the respondent No.2 shown sufficient grounds to reject the petition?

3. What order?

6. My answer to the above points are as follows:

Point No.1: In the Affirmative

Point No.2: In the Negative

Point No.2 : As per final order

for the following:

REASONS

7. The petitioner filed the petition u/s. 166 of IMV Act seeking compensation of Rs.10,00,000/- with interest at 12% p.a.

8. According to the petitioner the accident occurred on **06-05-2023**. Admittedly the present petition was filed on **28-01-2025**.

9. The respondent No.2 filed application u/o.VII Rule 11(d) of CPC to reject the claim petition filed by the petitioner on the ground that the petition is time barred.

10. On the other hand the petitioner filed application u/s.5 of Limitation Act to condone the delay in filing the petition.

11. Section 166 of IMV Act reads as follows:

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

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

[(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.]”

12. On plain reading of Section 166(3) of IMV Act, it is very clear that no application for compensation shall be entertained unless it is made within 6 months of the occurrence of the accident. The word used in the provision is shall, but the legislature did not stopped to that extent, but they continued to say in (4) of Section 166 of IMV Act which says that the claim

Tribunal shall treat any report of accident forwarded to it under Section 159 as an application for compensation under this Act. From this it is very clear that if any accident occurred then, the police shall send the Accident information report to the Tribunal and Tribunal shall treat the said report as application to the compensation. It is the duty of the Tribunal to send notice to both parties based on the accident information report. In the case on hand the police have not sent the detailed accident report to the court to treat the said report as application and as such the Tribunal has not known whether accident occurred and petitioner sustained injuries. There is no scope to the Tribunal to register the application for compensation in the absence of DAR report.

13. The respondent No.2 filed application u/o.VII Rule 11(d) of CPC to reject the claim petition on the ground that the petition is time barred. The alleged accident occurred on 06-05-2023 and present petition was filed on 28-01-2025. The respondent No.2 calculated the limitation from the date of accident and accordingly he filed application to reject the claim petition on the ground that the petition is time barred. This Tribunal is very much surprised about the calculation made by the respondent No.2. The delay is to be calculated from the date when the petitioner failed to file the application after

completion of 6 months. The respondent No.2 calculated the limitation from the date of accident which is not correct and not in accordance with Section 166(3) of IMV Act. The calculation is to be made after completion of 6 months. So that we get clear picture regarding delay in filing the petition. The limitation of 6 months will arise only in case where no report has been sent/uploading. In the present case also the report is not sent to the court and as such there is no scope for the court to treat the said report as application for compensation. Hence, the limitation of 6 months does not applicable.

14. The Hon'ble High court in writ petition 201961/2023 between divisional Manager United India Insurance Co. Ltd. Vs. Ramu and others held that Section 166 of the MV Act is a beneficial provision which is contained in the MV Act as amended from time to time to provide benefit to any injured or to the legal representative of deceased. The object of amendment is to see that the claimants either injured or legal representatives who may or may not know the provision of law are provided remedy through law automatically instead of they being required to approach the court. It is required that the police officers registering an FAR relating to an accident Adhere to the provision of Section 159 of the M.V.Act and forward all first information reports registered in respect of the

accident to the Claim Tribunal. The jurisdictional police have sent the FAR to the concerned jurisdictional magistrate, but have not filed either FAR or DAR to the Tribunal to register it as an application. Hence, this court is of the opinion that the respondent No.2 has urged before this Tribunal regarding 166(3) of IMV Act, but forget to mention Section 159 of IMV Rules. If the Tribunal based on the technical ground of limitation rejected the application, then the very ambit of the objective of the legislation passed by the legislature is defeated. The Hon'ble High Court of Karnataka in **W.P. No.202613/2024 in between Sriram General Insurance Company Ltd. Vs. Anil and another** held that the DAR is also required to be submitted to the Tribunal within 90 days from the date of accident. The Claims Tribunal is required to be treat the DAR as a claim petition for compensation. The DAR has not been filed. The insurance company cannot take advantage of the default on the part of the investigation officer in not filing the DAR report. Accordingly, the writ petitions filed by the insurance company was dismissed on 13th day of August, 2025. Hence, by applying the said ratio the present petition is not barred by limitation. **Accordingly, I answered the point No.1 & 2 in the Negative.**

15. Point No.3:- In view of the above discussion, I proceed to pass the following:

ORDER

The application by the petitioner u/s.5 of Limitation Act is hereby allowed.

In the result the delay of **449 days** in filing the application for compensation is condoned.

The application filed by the respondent No.2 u/o.VII Rule 11(d) of CPC is hereby rejected.

(Dictated to the Stenographer, computerized by her, corrected, signed and then pronounced by me in the open court on this the 1st day of December, 2025).

(M.Purushothama)

Prl. Sr. Civil Judge & ADDL.MACT,
Udupi.