

KAUP020045282023



***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 23rd day of April, 2025.

M.V.C.No. 1121/2023

Petitioner : Prathvik Naik,
Aged about 15 years,
S/o. Suresh Naik,
Minor rep. By his mother/natural guardian,
Malathi S.,
Aged about 39 years,
W/o.Suresh Naik,
R/at. D. No.2-113/2,
Lalitha Nivasa,
Pottukere,
Puttur village,
Udupi taluk and district.

[Both are rep.by Sri.A.K, Advocate]

Respondents : V/s
1. Yallappa Hadapada,
Aged about 41 years,
S/o. Shekarappa,

Near Govt. Polytechnic college,
Pragathi Nagara,
Alevoor,
Udupi taluk and district.

2. The Divisional Manager,
Shri Ram General Insurance
Company Ltd.,
4th Floor,
Paradigm Plaza,
Near RTO Oandeshwara,
Mangalore.

**[Rep.by Sri. M.R., Advocate for R2.
R1 – Placed exparte.]**

In I.A. No.I

Prathvik Naik : **Applicant/ petitioner**
Vs.
Yallappa Hadapada and another : **Opponents/respondents**

In I.A. No.IV

Sriram General Insurance Company : **Applicant/R2**
Vs.
Prathvik Naik : **Opponent**

Order on I.A. No.I & IV

The petitioner has filed petition under Section 5 of Limitation Act and Order 41, Rule 3-A of CPC and prayed this court to allow the petition by condoning the delay of 372 days in filing the petition.

2. The petitioner sworn to an affidavit and stated that he has filed the petition seeking compensation for the injuries sustained by him in a road traffic accident. On the date of the accident petitioner was travelling in a motor cycle as a pillion rider along with his cousin brother Puneeth Naik, who was riding the motor cycle and who died in the accident. Due to the accident and death of Puneeth Naik, they were under shock, hence they were not in a position to consult their Advocate and they were not in a position to give instruction to the Advocate to file petition seeking compensation. The delay is neither intentional nor deliberate and the same is beyond his control. Accordingly, prayed to allow the application.

3. On the other hand respondent No.2 has not filed objections to I.A. No.1, but respondent No.2 has filed application u/o. VII Rule 11(d) r/w. Section 151 of CPC to reject the claim petition, to which the petitioner filed objections.

4. Respondents No.1 remained absent continuously, hence placed exparte. Respondent No.2 filed written statement.

5. The petitioner's mother/natural guardian Malathi.S was examined as PW1, but not marked any.

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

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

1. Whether the petitioners have made out sufficient grounds to allow the application?

2. Whether the respondent No.2 has made out a ground to reject the petition as barred by limitation?

2. What order?

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

Point No.1: In the affirmative

Point No.2 : In the Negative

Point No.3 : As per final order

for the following:

REASONS

9. Point Nos.1 and 2: Since these two points are interconnected to each other, they are taken up together for common discussion.

10. The petitioner has filed the petition u/s. 166 of IMV Act seeking compensation of Rs.50,000/- with interest at the rate of 12% p.a.

11. According to the petitioner the accident occurred on **28-04-2022**. Admittedly the present petition was filed on **04-11-2023**.

12. 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.]”

13. 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.

14. The respondent No.2 filed application u/o.VII Rule 11(d) of CPC to reject the claim petition on the ground that there is a delay of 554 days. The alleged accident occurred on 28-04-2022 and present petition was filed on 04-11-2023. 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 there is a delay of 554 days. This Tribunal 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 Hon'ble High Court of Madras in a citation between Malaravan Vs.Praveen Travels Pvt. Ltd. In Cr.P.No.2558/2023 dated 18-8-2023 held that the claim petition need not be commenced only by way of presentation of the petition under Section 166. This is clear from Section 166(4) which states that a report filed by the police including the stake holders Insurance Companies and Jurisdictional Motor accident claims Tribunal, should be treated as claim petition. The main object to include (3) of Section 166 is the victims of Motor Accident need not depend upon stake holders in court for the initiation of proceedings. The proceeding itself is initiated on the basis of

report filed by the police authorities. 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.

15. 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. As stated above, the petitioners son caused death due to the accident. Hence, they were in shock, hence they were unable to collect the documents and to instruct their Advocate to file the petition. 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. Hence, this Tribunal is of the view that the petitioners have made out a ground to condone the delay in filing the petition. **Accordingly, I answered the point No.1 in the affirmative and point No.2 in the Negative.**

16. Point No.2:- In view of the above discussion, I proceed to pass the following:

ORDER

The application i.e I.A. No.I filed by the petitioner is hereby allowed.

In the result the delay in filing the application for compensation is condoned.

The I.A. No.IV 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 23rd day of April, 2025).

(M.Purushothama)
Prl. Sr. Civil Judge & ADDL.MACT,
Udupi.

ANNEXURE

List of witness examined for the petitioners:

P.W.1 : Malathi.S

List of documents exhibited for the petitioners:

Nil

List of witnesses examined for the respondents:-

None

List of documents exhibited for the respondents

Nil

(M.Purushothama)
Prl. Sr. Civil Judge & ADDL.MACT,
Udupi.