

**BEFORE MOTOR VEHICLES ACCIDENT CLAIMS
TRIBUNAL, BANGALORE CITY.
SCCH-14**

Present: Smt.Parveen A Bankapur,
B.Com.LL.B.(Spl),
Member, MACT,
XVI ADDL. JUDGE,
Court of Small Causes,
BENGALURU.

MVC No.6117/2019

Dated this the **6th day of April 2021**

Petitioner/s : Mahadesha,
S/o Balanaik,
Aged about 58 years,
Residing at No.17,
Mantapa, Bannerghatta,
Anekal, Bengaluru.
Karnataka – 560 083.

V/s (By pleader Sri.B.R.G)

Respondent/s 1. Hemaraj.B.Shetty
S/o Bhaskar Shetty.K.
Aged about 38 years,
No.115/164, 18th Main,
19th Cross, J.P.Nagar,
5th Phase,
Bengaluru – 560078.
Also at No.79, 21 'C' Main,
Marenahalli,
J.P.Nagar 2nd stage,
Bangalore – 78.

(By pleader Sri.AMN)

2. The New India Assurance
Co.Ltd.,
Regional Office,
No.9/2, Mahalakshmi
Chambers,
M.G.Road,
Bangalore – 560 001.

(By pleader Sri.JR)

ORDER ON APPLICATIONS

Application filed U/o. 22 Rule 3 R/w. Sec. 151 of CPC.
by the LR's of petitioner with a prayer to bring them as the
legal heirs of deceased petitioner.

2. Application is filed by the LR's of the petitioner
U/o. 22 Rule 9 R/w. Sec. 151 of CPC to set aside the
abatement of the petition against petitioner.

3. Application is filed by the LR's of petitioner U/Sec.
5 of Limitation Act, 1963 R/w. Sec. 151 of CPC to condone
the delay in bringing the legal heirs of petitioner.

All these three applications are supported by affidavit of
wife of the deceased petitioner. In the affidavit it is stated
that, petitioner was expired on 22-02-2020 due to accidental
injuries leaving behind LR's/applicant No.1 to 3 as his legal
heirs. The applicants were in shock and mental agony and

also due to lack of knowledge they have not informed the death of the petitioner to their counsel within time. The PM was conducted at Thally Govt, Hospital and about death intimation was informed to the concerned police.

It is further stated that, the delay is not deliberate or intentional one. Hence on these grounds, she prayed for allowing these applications.

4. The counsel for respondent has filed written objections to all the applications. The respondent contended that, the applications are filed in belated stage. The applicant No.2 and 3 are majors and they are not dependents on the income of the deceased and they are not entitled to come on record and to proceed in the matter. On those grounds prayed for rejections of the applications.

5. Heard the learned counsels.

6. Upon hearing arguments and on perusal of materials placed on record the following points that would arise for my consideration.

1. Whether the Applications filed by the applicants are deserves to be allowed?

2. What order?

7. My findings to the above points are as under.

Point No.1 - In the Affirmative.

Point No.2 - As per order for the following.

REASONS

8. **POINT NO.1:-** It is well settled legal principles of law that, the verbatim '**sufficient cause**' appearing either in Order 22 Rule 9 or under any other statute must be liberally construed. Acceptance of reasons put forth is a rule and rejection is an exception. This well settled legal principles find support from the ratio laid down by the Hon'ble Supreme Court of India in 2008 SAR (Civil) 789 (Perumon Bhagvathy Devaswom Perinadu vill v/s. Bhargavi Amma (Dead) By Lrd. Anmd others). In the said decision, the Hon'ble Supreme court after making survey of all decisions regarding condonation of delay has laid down the ratio thus:

“ 9. The principles applicable in considering applications for setting aside abatement may thus be summarized as follows:

(i) The words “sufficient cause for not making the application within the period of limitation” should be understood and applied in a reasonable, pragmatic, practical and liberal manner, depending upon the facts and circumstances of the case, and the type of

case. The words “sufficient cause” in Sec. 5 of Limitation Act should receive a liberal construction so as to advance justice, when the delay is not on account of any dilatory tactics, want of bonafides, deliberate inaction or negligence on the part of the appellant.

(ii) In considering the reasons for condonation of delay, the courts are more liberal with reference to applications for setting aside abatement, than other cases. While the court will have to keep in view that a valuable right accrues to the legal representatives of the deceased respondent when the appeal abates, it will not punish an appellant with foreclosure of the appeal, for unintended lapses. The courts tend to set aside abatement and decide the matter on merits, rather than terminate the appeal on the ground of abatement.

(iii) The decisive factor in condonation of delay, is not the length of delay, but sufficiency of a satisfactory explanation.

(iv) The extent or degree of leniency to be shown by a court depends on the nature of application and facts and circumstances of the case. For example, courts view delays in making applications in a pending appeal more leniently than delays in the

institution of an appeal. The courts view applications relating to lawyer's lapses more leniently than applications relating to litigant's lapses. The classic example is the difference in approach of courts to applications for condonation of delay in filing an appeal and applications for condonation of delay in refilling an appeal and applications for condonation of delay in refilling the appeal after rectification of defects.

(v) Want of 'diligence' or 'inaction' can be attributed to an appellant only when something required to be done by him, is not done. When nothing is required to be done, courts do not expect the appellant to be diligent. Where an appeal is admitted by the High Court and is not expected to be listed for final hearing for a few years, an appellant is not expected to be listed for final hearing for a few years, an appellant is not expected to visit the court or his lawyers every few weeks to ascertain the position nor keep checking whether the contesting respondent is alive. He merely awaits the call or information from his counsel about the listing of the appeal.

9. In the instant case, the applicants are stated that, petitioner was died due to the accidental injuries. It is stated by the applicant that, due to shock and mental agony and also lack of legal knowledge they have not informed the death intimation to the counsel. Further it is stated that, after the death PM was conducted and same is intimated to the concerned police station.

As per order 22 Rule 1 of CPC, no abatement by parties death, if right to sue survives to the death of plaintiff, the defendant was not cause the suit to abate, if the right to sue survives.

The petitioner has filed claim petition against the respondents for her personal injuries sustained in the accident. Hence, the present petition is personal claim of the deceased petitioner. ***This Rule is based on the doctrine Actio Personalis Moritur Cum Persona i.e., right of action for tort is put an end to by the death of either party, even if such action had been commenced in his life time.*** Hence, the cause of action for this petition comes to end on the death of petitioner. The said cause of action is not continue with his legal heirs.

10. The counsel for the petitioner submits that, due to accidental injuries only the petitioner was died. As per judgment of Hon'ble High Court of Karnataka in MFA

No.10280/2013 dated: 26-06-2015, which respect of death of the petitioner, who died during the pendency of the petition, but he died to the fatal injuries suffered during the accident then LR's are bring on record.

11. The cause of the death of the petitioner will be prove by the applicants. Therefore at this stage, if the LR's of the deceased petitioner are not brought on record the applicants will be put to loss. On the contrary, if delay is condoned and abatement is set aside and applicants are brought on record, no hardship or prejudiced would be caused to the other side.

12. Hence in view of the ratio laid down by the highest court of land, I am of the considered opinion that, applicants have made out grounds for condoning the delay in bringing legal representatives of petitioner. Hence, I answer the point No.1 in **Affirmative**.

13. **POINT NO.2:-** In view of the reasons assigned above, above, I proceed to pass the following order.

ORDER

Application filed by the LR's/applicants U/o. 22 Rule 3 of CPC., U/o. 22 Rule 9 R/w.Sec. 151 of CPC and U/Sec. 5 of Limitation Act, 1963 R/w.sec. 151 of CPC. are hereby allowed.

Delay in bringing L.Rs. of petitioner is hereby condoned and abatement of petition against the petitioner is set aside.

Applicant is permitted to bring the legal representatives of the deceased petitioner on record.

Applicant is directed to make necessary amendment in the cause title of the petition and to furnish the amended petition.

(Parveen A Bankapur)
XVI ADDL.JUDGE,
Court of Small Causes,
Bengaluru.

(Order pronounced in the Open Court)

ORDER

Application filed by the LR's/applicants U/o. 22 Rule 3 of CPC., U/o. 22 Rule 9 R/w.Sec. 151 of CPC and U/Sec. 5 of Limitation Act, 1963 R/w.sec. 151 of CPC. are hereby allowed.

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Applicant is directed to make necessary amendment in the cause title of the petition and to furnish the amended petition.

*XVI ADDL.JUDGE
Court of Small Causes & MACT.,
Bengaluru.*