



IN THE COURT OF VI ADDL. DISTRICT AND SESSIONS JUDGE
AT TUMAKURU

PRESENT : Smt.Shilpa K.S

BA.L., LL.M.,
VI Addl. District and Sessions Judge,
Tumakuru

Dated this the 15th day of July, 2026

Civil Mis.517/2019

Petitioner : K.M.Lingappa, S/o Mudalagiriappa,
A/a 65 years, R/a Opp. Green Wood
Saw Mill, Huliya Town, C.N.Halli Taluk,
Tumakuru District.

(By Smt. A.C.M., Advocate)

V/s

Respondents: 1. H.N.Manjula, W/o. A.G. Ramesh,
A/a. 40 years,
2. R.Amit, S/o. A.G. Ramesh, A/a. 17 years,
3. R.Ankit, S/o. A.G. Ramesh, A/a. 14 years,
Respondents No.2 and 3 are minors,
represented by their natural guardian
mother Manjula -respondent No.1.
4. A.P.Giriyappa, S/o. Late Kenchisettaru,
A/a. 67 years,
5. Susheelamma, W/o. A.P.Giriyappa,
A/a. 62 years,



Now all are R/at. Hulyar Town,
C.N.Halli Taluk, Tumakuru District.

6. Bajaj Alliance General Insurance Co.Ltd,
2nd Floor, Opp: BSNL Bhavan,
Lakshmi Complex, B.H.Road,
Hassan-573 207.

(R1 to R5 by Sri. H.R.R., R6 by Sri.N.V.N.,
Advocate)

ORDERS ON PETITION FILED U/O.9 R.13 OF CPC

The petitioner had filed this petition to set aside the exparte judgment and decree passed in M.V.C.No.854/2010 against the petitioner by the then Fast track II (Now VI Addl. District & Sessions Judge, Tumakuru) and restore the same permitting the petitioner to contest the case.

2. It is submitted that the respondents No.1 to 5 have filed M.V.C.No.854/2010 seeking compensation for the death of Ramesha in the road traffic accident. That the petitioner herein is the owner of the tractor trailer bearing No.KA-06-T-2711/2712. That due to the bonafide reason this petitioner could not appear in M.V.C.No.854/2010 and hence he was placed exparte. The policy of the said tractor as on the



date of accident is valid and even the tractor driver was holding valid driving licence which was not brought notice to the court. That the petitioner had met with an accident on 14.04.2010 and sustained grievous injuries and could not able to move and contact his counsel. That this petitioner came to know about the judgment and in M.V.C.No.854/2010 recently when he had received the notice in Ex.No.267/2019. Then he had contacted his advocate and obtained the copies. Even the petitioner was suffered with jaundice and his parents are not well. Hence for this bonafide reason he could not appear in MVC.854/2010. Hence this petition.

3. After service of notice the respondents No.1 to 5 have appeared before this court through their counsel but only the respondent No.6 has filed objections.

4. The averments of the objections of the respondents No.6 is as under :-

This petition is not maintainable under the eye of law. The petition is time barred. The respondents No.1 to 5 have



filed M.V.C.No.854/2010 seeking compensation. That even after duly service of notice the petitioner intentionally remained absent. That after evidence the court had passed judgment on 29.09.2012. That this petition is filed after lapse of six years 11 months and 25 days. The delay was not properly explained. That when the petitioner had received the notice he was very well aware about the petition in the year 2010 itself. It is false that this petitioner before filing the petition had met with an accident and could not contact his counsel. The petitioner has not produced any medical documents and no ground exists to believe that his non appearance is not intentional. The petitioner instead of preferring the appeal has filed this petition just to harass the respondents and prays to dismiss the petition with costs.

5. In order to prove the case the SPA holder of the petitioner has got examined himself as PW.1 and got marked 20 documents as Ex.P.1 to 20 and closed his side.

By way of rebuttal the respondents submit no evidence.



6. Heard both sides.

7. The following points would arise for my consideration is as under:

1. Whether the petitioner proves that the exparte judgment and award passed in M.V.C.No.854/2010 dt.29.09.2012 against him by placing him as absent has to be set aside ?

2. Whether the petitioner proves that the delay in filing the petition has to be condoned ?

3. What Order?

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

Point No.1: In affirmative

Point No.2: In affirmative

Point No.3: As per final order for the following:

REASONS

9. **Point No.1:** It is the grievance of the petitioner that he was placed exparte in M.V.C No.854/2010 as he was unable to contact his counsel due to injuries sustained by him. The same was opposed by the respondents No.6.



10. To prove this the SPA holder petitioner was got examined himself as Pw.1 by reiterating all the averments of the petition in his affidavit. Further it is pertinent to note that the respondents submit no cross examination. Thereby the oral evidence of the PW.1 has remained intact and unimpeached by the other side.

11. The respondent No.6 had took the defence that there is no bonafideness in the petition. Even the respondents have not adduced their rebuttal evidence.

12. In order to prove the case the PW.1 has got marked the SPA given by the petitioner to the PW.1 to depose on his behalf as per Ex.P.1 which is not under dispute. The copy of judgment and award in M.v.C.No.854/2010 is got marked as Ex.P.2 and 3.

13. The Ex.P.4 to 20 are the copy of petition, deposition, police records, discharge summary, out patient record, copy of policy, medical bill, requisition, judgment and award passed in M.V.C.No.1471/2008 which was filed the present



petitioner as he had met with an accident and sustained injuries. So on perusal of these documents it is clear that the petitioner had met with an accident in the year 2008 itself and the said case was disposed off in the year 2013. Hence from these documents it is noticed that the petitioner was unable to contact his counsel.

14. The O.9 R.13 of CPC reads that “ In any case in which a decree is passed exparte against a defendant, he may apply to the court by which the decree was passed for an order to set it aside, and if he satisfies the court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the court shall make an order setting aside the decree as against him upon such terms as to costs, payment into court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.”

15. Therefore the petitioner has shown bonafide reason with proper explanation for his non-appearance. The



petitioner was unable to contact his counsel and appear in MVC case where he was placed absent.

16. At this juncture I would like to rely upon decision reported in (2006) 12 SCC 104 – It is observed that O.9 R.13 of CPC is an discretionary power of the court to set aside exparte decree if sufficient cause shown. The said order is an judicial order.

17. So with the available documents it is clear that the petitioner with his evidence has established that he was unable to contact his counsel and appear in the MVC.No.854/2010. Hence an opportunity to be given to him to contest the case. Hence I answered the **point No.1 in affirmative.**

18. **Points No.2** :- The petitioner has filed I.A.No.1 seeking to condone 06 years 11 months 25 days delay in filing the petition. Further the petitioner has stated that as he could not contact his counsel and he was not aware about the judgment passed in M.V.C.No.854/2010 there was delay. The



petitioner came to know about the judgment when he had received notice in Ex.267/2019. Hence the said delay has to be condoned. The same was not opposed by the other side. After hearing the counsel of petitioner and when he has proved his case then if the delay of 06 years 11 months 25 days is condoned no hardship would be caused to the other side. Hence in the interest of justice I.A.No.1 is allowed on costs of Rs.500/-. Hence I answered the **point No.2 in affirmative.**

19. **Point No.3** : In view of my above finding I proceed to pass the following:

ORDER

Petition filed U/O.9 R.13 of CPC is allowed on costs of Rs.2,000/-.

Thereby the exparte judgment and decree dt.29.09.2012 passed in M.V.C.No.854/2010 on the file of the then Fast Track court II & MACT (Now VI Additional District & Sessions Judge, Tumakuru against the petitioner is hereby set aside.

The M.V.C.No.854/2010 is hereby restored.



The I.A.No.1 filed U/s 5 of Limitation Act is hereby allowed on costs of Rs.500/-.

Both parties are hereby directed to appear before VI Additional District & Sessions Judge, Tumakuru in M.V.C.No.854/2010 on 12.08.2026 without expecting any further notice.

Both parties are hereby directed to dispose M.V.C.No.854/2010 as expeditious as possible without seeking unreasonable adjournments.

(Dictated to the Stenographer Grade -1 directly on computer got typed by her, printout taken by her, corrected, signed and then pronounced on this the 15th July, 2026)

(SHILPA. K.S)
VI Addl. Dist. and Sessions Judge,
Tumakuru.

ANNEXURE

1. List of witnesses examined for the petitioner :

PW.1 : H.N.Kirankumar

2. List of documents marked for the petitioner :

Ex.P1 : Special power of attorney
Ex.P1(a) : Signature of PW.1
Ex.P1(b) : Signature of father of PW.1
Ex.P2 : C/c. Judgment in MVC No.854/2010
Ex.P3 : C/c. Award in MVC No.854/2010



Ex.P4	:	C/c. application in MVC No.1471/2008
Ex.P5	:	C/c. Deposition in MVC No.1471/2008
Ex.P6	:	C/c. FIR
Ex.P7	:	C/c. Charge sheet front sheet
Ex.P8 & 9	:	C/c. Wound certificates
Ex.P10	:	C/c. Prescriptions
Ex.P11 to 13:		C/c. Discharge summary
Ex.P14	:	C/c. Outpatient case sheet
Ex.P15	:	C/c. 9 medical bills
Ex.P16	:	C/c. Payment receipt
Ex.P17	:	C/c. Policy
Ex.P18	:	C/c. order and award in MVC. 1471/08
Ex.P19	:	01 medical bill
Ex.P20	:	Requisition form

3. List of witnesses examined for the respondents :

-NIL-

4. List of documents marked for the respondents :

-NIL-

**VI Addl. Dist. and Sessions Judge,
Tumakuru.**