

IN THE COURT OF II ADDL.SENIOR CIVIL JUDGE & Addl.

MACT-V, AT CHITRADURGA

DATED THIS THE 17th DAY OF OCTOBER, 2023

Present: Smt.Ujwala Veeranna Siddannavar, B.Sc., LL.M.,
II Addl.Senior Civil Judge & Addl. MACT-V,
Chitradurga.

MVC.135/2023

Petitioner : Sri. Sanjay V.,
S/o Virupakshappa R.,
Aged about 22 years,
R/o K.B.Extension,
Opp. Kamma temple,
Chitradurga City.

(By Sri.M.N.N., Advocate)

V/S

Respondents : 1. Simrankaur Raghbirsingh Dillon,
S/o Raghbir,
Owner of Lorry bearing
No.MH-43-Y-7587,
R/o Shop No.7,
Lakshman Commercial Centre,
Plot No.5,
Sector-18, Vashi,
Navi Mumbai Vashi Thane, Thane,
Maharastra State-400703.

2. The Branch Manager,
Bajaj General Insurance,
Co.Ltd., Branch Office,
TBR Towers,
Adjacent to Jain College,
New Mission Road,
Bangalore.

(R1 – By Sri.M.G.R Adv)

(R2 – By Sri.B.M.R Adv)

PARTIES ON IA NO.I**Applicant/Petitioner : Sri. Sanjay V.,****V/s****Opponent/Respondent: Simrankaur Raghbirsingh Dillon,****ORDER ON IA NO.I**

At the time of objection to main petition, respondents No. 2 counsel filed petition under Order 7 Rule 11 (d) R/w Sec.151 CPC and R/w Sec.166(3) of Motor Vehicle Act for rejection of petition filed by petitioner.

2. In the affidavit annexed to petition, respondent No.2 company submitted that, the alleged accident occurred on 24.04.2022 while the claim petition has been filed on 22.02.2023 i.e after 13 months from the date of the alleged accident. There is a delay of 13 months for filing this petition claiming compensation. Hence it is a abuse of law. As per the recent amendment to Motor Vehicles Act, 1988 Sec.166(3) contemplates that claim petition should be filed within six months and no application for compensation shall be entertained unless it is made within six months from the date of occurrence of the accident. Hence the claim petition filed by petitioner is not maintainable in the eye of law. Therefore, pray for rejection of the

petition as prayed.

3. Petitioner counsel filed objection to the said petition denying the averments of the petition and submitted that investigating officer of Davanagere Rural Police Station have conducted investigation of the alleged accident and collected information from witnesses, owner of the offending vehicle and documents from SSIMS Hospital Davanagere. After receiving the relevant document such as IMV report from RTO on 30.10.2022 police filed charge sheet before Hon'ble Principal Senior Civil Judge and JMFC, Davanagere on 01.10.2022. After receiving all the documents petitioner filed this claim petition on 04.02.2023. Hence there is no delay caused by petitioner in filing this petition. Petitioner being illiterate having no legal knowledge. Respondent No.2 company to escape from the liability filed this petition, hence it may be dismissed.

4. Heard both counsel for petitioner and respondent No.2 and perused materials placed on record.

5. Upon hearing the arguments and on perusal of the materials placed on record, following points would arise for my consideration;

1. *Whether the petition needs to be rejected under O.7 R.11(d) R/w sec 151 of CPC, R/w.166(3) of Motor Vehicle Act?*

2. *What order?*

6. My findings to the above points are as under;

Point No.1 :- In the negative

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

REASONS

7. **POINT NO.1**:- Petitioner filed motor vehicle claim petition against respondents for the accident occurred on 24.04.2022 at about 8.30 a.m. As per the case of petitioner he met with an accident caused by lorry driver bearing No.MH-43/Y-7587 and took treatment for the same and incurred huge medical expenses. Hence he filed claim petition seeking compensation from respondent No.1/owner of the said offending vehicle and respondent No.2/insurance company wherein offending vehicle has been insured.

8. After service of summons respondent No.1 and 2 appeared through their counsel. Respondent No.2 filed this petition for rejection of the petition on the ground that it is barred

by limitation. As per Sec.166(3) Motor Vehicle Act no application filed for compensation shall be entertained unless it is made within 6 months from the occurrence of the accident.

9. In the present case as alleged accident occurred on 24.04.2022, the petition has been filed after delay of 13 months. Hence it is argued that petition is not maintainable. On the other hand petitioner counsel submitted that as the police investigation carried out by Davanagere Rural Police and they have filed charge sheet on 01.12.2022. Hence petitioner received the said police papers on 04.02.2023 and therefore there is no delay as stated by respondent No.2 insurance company.

10. Admittedly the accident occurred on 24.04.2022 and the petition has been filed before this court on 04.02.2023 after lapse of 6 months from the date of the alleged accident. Hence as per latest amendment to Motor Vehicles Rules, there is a delay in approaching this court for claiming compensation under Sec.166(3) of the act.

11. In this regard petitioner counsel relied upon the judgment of Hon'ble High Court of Karnataka in

W.P.No.201961/2023 Divisional Manager, United India Insurance Company Limited Versus Ramu @ Ramesh and others wherein Hon'ble High Court of Karnataka while deciding a similar matter on the same point under the petition U/Sec.166(3) of Motor Vehicle Act held that the said provision has to be read inconsonance with Sec.159, 160, 161 of MV Act. It is further held that as there is no particular time fixed for appearance of the claimants if details are not furnished by investigating officer, sub-section 3 of Sec.166 of Motor Vehicle Act would be rendered redundant by the methodology of carrying out the investigation and registering the claim petition. The Rules of 2022 has not been effected in entirety. The various stake holders are not having synchronous manner while dealing with the petition. Therefore the direction have been given to various stake holders in the said judgment by Hon'ble High Court of Karnataka and further held that the petition is maintainable and cannot be dismissed U/Sec.166(3) of Motor Vehicle Act.

12. In view of the said judgment the present petition is also maintainable and cannot be rejected under order 7 rule 11(d) CPC

at the threshold only on the ground that claim petition has been filed after lapse of six months. Further it is well settled principal of law that point of limitation is mixed question of law and fact, it cannot be decided at the initial stage without looking into the evidence adduced by both the parties. Hence on the ground urged by respondent No.2 the petition cannot be rejected. Respondent No.2 not made out sufficient grounds for rejecting the petition as claimed. Accordingly, I answer **point no.1 in negative.**

13. **POINT NO.2:** For the reasons stated above point No.1, I proceed to pass the following:-

ORDER

I.A. No.I filed by respondent No.2
under Order 7 Rule 11 (d) R/w Sec.151 CPC,
R/w Sec.166(3) Motor Vehicle Act is
petition is hereby dismissed.

(Dictated to the Stenographer, transcription generated through the computer by her with my verification and then signed and pronounced by me in the Open Court dated this the 17th day of October, 2023)

**(Smt.Ujwala Veeranna Siddannavar),
II Addl.Sr.Civil Judge and JMFC
Chitradurga.**