



CNR: KAHC010605512024

NC: 2026:KHC:41870
MFA No. 7138 of 2024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 6TH DAY OF AUGUST, 2026

BEFORE

THE HON'BLE MR. JUSTICE PRADEEP SINGH YERUR

MISCELLANEOUS FIRST APPEAL NO. 7138 OF 2024 (CPC)

BETWEEN:

MR. RAJESH SHENOY
S/O K. VITTAL SHENOY
AGED ABOUT 56 YEARS,
PROP ECONOMIC GOODS CARRIERS,
AZIZUDDIN CROSS ROAD,
BUNDER, MANGALURU,
D.K. DISTRICT - 575 001

...APPELLANT

(BY SRI. K RAVISHANKAR., ADVOCATE)

AND:

1. MRS. NEELU
W/O LATE AMMU MUGERA
AGED ABOUT 54 YEARS,
R/AT GANDHINAGAR HOUSE
CHARMADI VILLAGE,
KAKKNJE POST
BELTHANGADY TALUK,
D.K DISTRICT - 575 002
2. MR. RAJESH. P
S/O AMMINI PUTHUVELIE
MAJOR

Digitally signed
by
GAVRIBIDANUR
SUBRAMANYA
GUPTA
SREENATH
Location: HIGH
COURT OF
KARNATAKA



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R/AT D. NO. 17-13-1072,
FLAT NO. S-7,
2ND FLOOR, B.V. ROAD,
ATHAVAR, MANGALURU
D.K DISTRICT - 575 002

3. IFKO TOKIO GENERAL
INSURANCE CO. LTD.,
IIIRD FLOOR,
LALBAGH TOWER, M.G.ROAD,
MANGALURU - 575 003
REP. BY ITS
AUTHORIZED SIGNATORY

...RESPONDENTS

(BY SRI.MALLIKARJUN., ADVOCATE FOR
SRI.B.PRADEEP., ADVOCATE FOR R-3;
NOTICE TO R1 & R2 IS DISPENSED WITH V.O.D 27.07.2026)

THIS MFA IS FILED U/S.43 RULE 1(d) OF THE CPC,
AGAINST THE ORDER DT.18.07.2024 PASSED IN
MISC.NO.10/2018 ON THE FILE OF THE II ADDITIONAL SENIOR
CIVIL JUDGE AND CJM, MANGALURU, DAKSHINA KANNADA,
DISMISSING THE PETITION FILED U/O.IX RULE 13 R/W
SEC.151 OF CPC.

THIS APPEAL, COMING ON FOR ADMISSION, THIS DAY,
JUDGMENT WAS DELIVERED THEREIN AS UNDER:



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CORAM: HON'BLE MR. JUSTICE PRADEEP SINGH YERUR

ORAL JUDGMENT

This appeal is preferred by the appellant, who is the petitioner before the II Additional Senior Civil Judge and CJM, Mangaluru [also acting as Motor Vehicle Claims Tribunal] in Misc.No.10/2018, whereby the learned trial Judge dismissed the application filed by the appellant-petitioner under Order 9 Rule 13 of CPC, whereby he had sought to set aside the ex-parte judgment and award passed in MVC No.240/2016 by the MACT & II Addl. Senior Civil Judge & CJM, Mangaluru, D.K.

2. The appellant-petitioner is the policy holder of the vehicle namely a lorry bearing registration No.KA-19-B-9697. Respondent No.1 is the claimant, respondent No.2 is the RC owner and respondent No.3 is the insurance company before the Claims Tribunal.

3. Brief facts of the case are as under:

A claim petition was filed before the Claims Tribunal claiming compensation for the death of one person namely Baby Mugeru in a road traffic accident occurred on 27.12.2009 at about 02.00 a.m., while the deceased was proceeding as a



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cleaner in the lorry bearing registration No.KA-19-B-9697 from Sakaleshpura towards Mangaluru. As the lorry had lost control, dashed against another lorry bearing registration No.KA-12-8481 parked on the left side of the road. Due to which, the deceased Babi Mugere sustained fatal injuries and succumbed to the injuries while undergoing treatment in the KMC Hospital, Mangalore. In view of the death having occurred due to the road traffic accident, a motor vehicle accident case was filed in MVC No.240/2016 against the appellant and respondent Nos.2 and 3, who were arrayed as respondent Nos.1, 2 and 3 in the said claim petition. The Claims Tribunal had issued notice to the respondents.

3.1. Upon service of notice, the matter was proceeded. However, the appellant, who was respondent No.3, did not participate in the proceedings and he was placed ex-parte. Upon enquiry being conducted, the claim petition came to be allowed and a judgment and award was passed directing respondent Nos.1 and 3 to be jointly and severally liable to pay the compensation amount of Rs.6,07,678/- along with interest rate at 6% per annum within a period of 60 days.



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3.2. In view of the fact that the appellant was placed ex-parte and an award came to be passed against him, the appellant preferred an application under Order 9 Rule 13 of CPC in Misc.No.10/2018 seeking to set aside the ex-parte order and to permit him to contest the matter on merits. Along with the said Miscellaneous Petition, an application came to be filed seeking condonation of delay of 17 days in filing the said Miscellaneous Petition.

3.3. Upon contest in the said miscellaneous petition, the appellant-claimant and respondent No.2-RC owner remained absent and respondent No.3-Insurance company contested the matter. However, while deciding the said Miscellaneous Petition, the learned trial Judge came to a conclusion that the appellant-petitioner failed to explain each and every day's delay and did not make out any cogent reasons for condonation of delay and therefore, did not show sufficient cause, means and cause for condonation of delay and accordingly, for having not made out a proper ground for condoning the delay of 17 days, the petition came to be dismissed.



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3.4. It is this Order, which is questioned by the appellant-petitioner, who was respondent No.3, before the Claims Tribunal.

4. Learned counsel for the appellant contends that the impugned order passed by the learned trial Court is perverse, illegal, arbitrary and the same is liable to be set aside as it has come to a conclusion without taking into consideration the averments made in the Miscellaneous Petition for condonation of delay, whereby detailed explanations were given by the appellant in paragraph Nos.3 and 4 explaining the reasons for the delay. He contends that the delay was only 17 days and he has explained the cause and reasons and the same being bona fide, valid and sufficient, the trial Court ought to have condoned the same, allowed the application and permitted the appellant-petitioner to contest the matter on merits by setting aside the ex-parte order, which has not been done. Hence, there is miscarriage of justice caused to the appellant as no opportunity was granted to him to defend his case on merits. On these grounds, learned counsel seeks to allow the appeal by setting aside the impugned order.



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5. Learned counsel Sri. Mallikarjun appearing on behalf of Sri. B. Pradeep for respondent No.3 vehemently contends that there is no illegality or perversity in the impugned order passed by the trial Court. The appellant ought to have shown proper, sufficient cause and satisfactory explanation with regard to the delay, which has not been done. Hence, the trial Court has rightly dismissed the application, which does not call for interference. Therefore, he sustains the impugned order and also contends that the appellant has not deposited 50% of the award amount as ordered by this Court while granting an interim order in this appeal.

6. I have heard learned counsel for the appellant and learned counsel for respondent No.3.

7. While considering an application for condonation of delay filed under Section 5 of the Limitation Act, the primary requirement is to see whether the application under Section 5 of the Limitation Act would be applicable and whether it could be considered. Pursuant thereto, the Court is required to see whether the appellant-petitioner has made out sufficient ground to condone the delay by showing sufficient, satisfactory



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explanation with regard to the condonation of delay and the delay having been occurred due to *bona fide* reasons. Once these reasons are stated and explained in the petition or application, it is for the Court to take into consideration whether the delay could be condoned, whether the delay is inordinate, whether the delay is humongous and whether huge number of days are incurred by the appellant-petitioner in moving the Court and thereafter, whether *bona fide* and sufficient cause are shown to condone the delay.

8. The Hon'ble Apex Court in the case of ***Esha Bhattacharjee v. Raghunathpur Nafar Academy*** reported in **(2013) 12 SCC 649** has laid down the law with regard to condoning the delay on an application filed under Section 5 of the Limitation Act in all kinds of matters. Paragraph No.21 of ***Esha Bhattacharjee's*** case reads as under:

"21. *From the aforesaid authorities the principles that can broadly be culled out are:*

21.1. *(i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay,*



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for the courts are not supposed to legalise injustice but are obliged to remove injustice.

21.2. *(ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.*

21.3. *(iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.*

21.4. *(iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.*

21.5. *(v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.*

21.6. *(vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.*



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21.7. (vii) *The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.*

21.8. (viii) *There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.*

21.9. (ix) *The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.*

21.10. (x) *If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.*

21.11. (xi) *It is to be borne in mind that no one gets away with fraud, misrepresentation or*



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interpolation by taking recourse to the technicalities of law of limitation.

21.12. (xii) *The entire gamut of facts are to be carefully scrutinised and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.*

21.13. (xiii) *The State or a public body or an entity representing a collective cause should be given some acceptable latitude."*

9. Taking into consideration the judgments of the Hon'ble Apex Court and the facts on hand, it is apparently clear that the delay is only 17 days. The reasons are assigned in paragraph Nos.3 and 4, which appears to be *bona fide*, satisfactory and acceptable. The trial Court instead of taking hyper technical approach for the appellant-petitioner to explain each day's delay, which is not the requirement in law, ought to have condoned the delay and permit the appellant to proceed further in the matter by setting aside the ex-parte order and consider the matter on merits, which has not been done. Hence, this Court is of the opinion that the appellant has made



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out a valid case seeking interference of the impugned order. Accordingly, the appeal deserves to be allowed.

10. Hence, I pass the following:

ORDER

- i) The appeal is allowed.
- ii) The impugned order dated 18.07.2024 passed in Miscellaneous Petition No.10/2018 by the II Additional Civil Judge and CJM, Mangaluru, D.K., is hereby set aside.
- iii) Consequently, Miscellaneous Petition No.10/2018 is allowed. The impugned judgment and award dated 12.02.2018 placing the appellant-petitioner ex-parte is hereby set aside, so far as the appellant-respondent No.3 is concerned.
- iv) The matter is remitted to the Tribunal for reconsideration afresh and an opportunity shall be provided to the appellant-respondent No.3, who is the policy holder of the vehicle, to contest the matter in accordance with law.



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- v) As the claim petition is of the year 2016, the claim petition shall be decided expeditiously. Appellant-respondent No.3 shall co-operate with the Tribunal.

Pending applications, if any, stand disposed of.

Sd/-
(PRADEEP SINGH YERUR)
JUDGE

VM
List No.: 1 SI No.: 31