

Order on I.A. No.I U/Sec.5 of Limitation Act.

The petitioner has filed an application U/Sec.5 of Limitation Act prays that to condone the delay of 05 months by allowing this application in the interest of justice and equity.

2. In support of this application the petitioner has swearing her affidavit.

3. Per contra the respondents have not filed any objection to this application.

4. Enquiry is conducted for condoning the delay. The petitioner herself is examined as PW-1.

5. Having heard on both the sides.

6. Following points will arise for my consideration:

1. *Whether the petitioner has made out sufficient cause to condone the delay for 05 months?*
2. *What order?*

7. My answer to the above points is as under:-

Point No.1 - In the Affirmative

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

REASONS

8. **Point No.1:-** The petitioner has filed this petition against the respondents after lapse of 05 months. The petitioner has submitted in her affidavit that her

husband by name Thimmesh was died in RTA on 29-12-2015 and there is a delay in filing the petition and earlier they have filed claim petition against the respondents under Sec.166 of IMV Act. Further submitted that her husband was employee with respondent No.1 and there is an employee and employer relationship with respondent No.1 and they have got not pressing the MVC No.467/2016 against the respondents and dismiss the said petition. Further petitioner has submitted that now they are filing this petition under Employees Compensation Act. Further petitioner has submitted that they have illiterate and innocent and also suffered by family problems as such there is a delay in filing the application and this delay is not an intentional one and it is bonafide and if the application is not allowed she will put untold hardship. Hence, prays that to condone the delay of 05 months in the interest of justice and equity.

9. In order to substantiate the facts of the petitioner regarding condonation of delay the petitioner No.1 herself examined as PW-1 and petitioner No.2 and 3 are the son and daughter of petitioner No.1. The PW-1 elicited in her examination-in-chief that her husband was died under the employment of respondent No.1 as he was doing coolie work in the Tractor which belongs to respondent No.1. Further PW-1 elicited that on 29-12-2015 at about 8.14 p.m. the accident was occurred in between Nerlakatte and Talya road due to the rash and negligence

act of the driver of the Tractor bearing Reg.No.KA-14/TA-5226 wherein he was working as a coolie under the employment of respondent No.1. Further PW-1 elicited that her husband was fell down from the Tractor and sustained grievous injuries on his head and died on the spot. The PW-1 further elicited that due to illiterate and lack of knowledge not given proper information to her counsel and filed a MVC No.467/2016 and she has not obtained any award in the said petition and said petition was not pressed by her and there is a delay of 05 months to file this petition and it is not intentional one.

10. On perusal of the oral evidence of PW-1 it reveals that the petitioner has submitted that due to lack of knowledge not given proper information to file the proper petition and it is not an intentional one. It is worth to note that the respondents have not objected this petition and moreover not filed any objection. However the respondent No.2 cross-examined the PW-1 only put the suggestions for denial, the PW-1 categorically denied the suggestions.

11. In view of the arguments advanced by the learned counsel for petitioner it reveals that the delay is not an intentional one as submitted by the petitioner, it is pertinent to note that according to Sec.5 of Limitation Act there is no general principle saving the party from all mistakes, if there is lack of bonafide on the part of the party and the expression sufficient cause must receive a liberal

construction so as to advance substantial justice and generally delay in preferring petition is required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bonafide is imputable to the parties seeking condonation of the delay.

12. According to Sec.5 of Limitation Act gives the courts a discretion which in respect of exercising its judicial power and discretion ought to be exercised upon principle which are well understood i.e. the words 'sufficient cause' receiving a liberal construction so as to advance a substantial justice. Hence, in the present case in hand the petitioner has submitted that she has not given proper information to her counsel regarding the employer and employee relationship and filed a claim petition U/Sec.166 of IMV Act and the said petition was dismissed without obtaining any award. Therefore it reveals that the respondents have not objected this application as such the delay has to be condoned no hardship will cause to the other side. Hence, for the above reason point No.1 is answered in the Affirmative.

13. **Point No.2:-** In view of the above reasons, I proceed to pass the following:-

ORDER

IA.No.I U/Sec.5 of Limitation
Act filed by the petitioner is hereby
allowed awarding cost of Rs.200/-.

The delay is condoned and petitioner is permitted to proceed the petition.

(Smt. Prema Vasantao Pawar)
Senior Civil Judge & JMFC.,
Holalkere.