NC: 2025:KHC-K:1821
WP No. 203467 of 2023

IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 21ST DAY OF MARCH, 2025

BEFORE

THE HON'BLE MR JUSTICE VIJAYKUMAR A. PATIL

WRIT PETITION NO. 203467 OF 2023 (GM-CPC)

BETWEEN:

1. RAJARAM S/O TUKARAM TINGARE
   AGE: 76 YEARS, OCC: NIL,

2. SUBHADRA W/O RAJARAM TINGARE
   AGE: 68 YEARS, OCC: NIL,

3. SUVRNA W/O RAGHUNATH TINGARE
   AGE: 43 YEARS, OCC: HOUSEHOLD,

4. SOMALING S/O RAGHUNATH TINGARE
   AGE: 25 YEARS, OCC: STUDENT,

5. SHIVALING S/O RAGHUNATH TINGARE
   AGE: 23 YEARS, OCC: STUDENT,

   ALL ARE R/O SHAHU NAGAR,
   VIJAYAPURA – 586101.

…PETITIONERS

(BY SRI SACHIN M. MAHAJAN &
SRI VIRANAGOUDA M BIRADAR, ADVOCATES)

AND:

THE DIVISIONAL CONTROLLER
MSRTC, SOLAPUR DIVISION,
SOLAPUR, MAHARASHTRA STATE – 413001.

…RESPONDENT

(BY SRI SHIVASHANKAR H. MANUR, ADVOCATE)

Digitally signed by RAMESH MATHAPATI
Location: HIGH COURT OF KARNATAKA

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT IN THE NATURE OF CERTIORARI BY QUASHING THE ORDER OF MOTOR ACCIDENT CLAIMS TRIBUNAL NO. IV ADDL. DISTRICT AND SESSIONS JUDGE, VIJAYAPUR, DATED 23.09.2022, IN M.V.C.NO.858/2015 VIDE ANNEXURE-F AND CONSEQUENTIALLY ALLOW THE I.A. NO.VII.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE VIJAYKUMAR A. PATIL

ORAL ORDER

(PER: HON'BLE MR JUSTICE VIJAYKUMAR A. PATIL)

This petition is filed by the petitioners seeking to quash the order dated 23.09.2022 passed in MVC No.858/2015 by the District and Sessions Judge, Vijayapur, wherein the application filed by the petitioners in IA.No.VII filed under Order VI Rule 17 CPC came to be dismissed.

2. Heard the learned counsel for the petitioners as well as learned counsel for the respondent.

3. Sri. Sachin M. Mahajan, learned counsel for the petitioners submits that the petitioners have filed a claim

petition under Section 166 of Motor Vehicles Act, 1988 (hereinafter referred to as "M.V.Act') seeking compensation before the Claims Tribunal on account of death of the son of petitioner Nos.1 and 2, husband of petitioner No.3 and father of petitioner Nos.4 and 5. It is submitted that after filing of the petition, the petitioners have filed an application in IA.No.VII seeking amendment of the claim petition by converting the claim petition from 166 of M.V.Act to Section 163-A M.V.Act. However, the Tribunal has rejected the said application on the ground that the application is filed belatedly after leading the evidence of PW.1. It is further submitted that the Tribunal has committed an error in rejecting the said application as the mandate of Order VI Rule 17 permits the filing of an application seeking for amendment of the pleadings at any stage of the proceedings. It is submitted that the petitioners were unable to prove the aspect of negligence before the Tribunal. Therefore, they have decided to restrict their claim by seeking an amendment which was

erroneously rejected by the Tribunal. Hence he seeks to allow the application by allowing the writ petition.

4. Per Contra, Sri.Shivashankar A.Manur, learned counsel for the respondent-Corporation vehemently opposed the writ petition. It is submitted that the petitioners have filed an application belatedly after adducing the evidence of PW.1, which clearly demonstrates that the petitioners have no case on merits under section 166 of M.V.Act and hence entertaining such an application at a belated stage would allow the party to misuse the process of Court and such an act is an abuse of process of the Court. Hence he seeks to dismiss the writ petition.

5. I have heard the arguments of the learned counsel for the petitioners and the learned counsel for the respondent-Corporation and meticulously perused the materials available on record.

6. The pleading and evidence on record indicates that in a road accident dated 6.11.2011 one Sri. Raghunath sustained grievous injuries and succumbed to those injuries. The dependants of the deceased have filed the claim petition under section 166 of M.V.Act, before the MACT-Vijayapur. In the said proceedings, the respondent-Corporation filed detailed objections denying the negligence of the driver of the bus alleged to have been involved in the said accident. The petitioner No.1 examined himself as PW.1 and thereafter filed an application under Order VI Rule 17 seeking to amend the petition by converting the petition to one under section 163-A of M.V.Act from 166 of M.V.Act.

7. The Tribunal came to the conclusion that the application is filed at a belated stage after adducing the evidence and on coming to know that the petitioners would fail to prove the aspect of negligence before the Tribunal. In my considered view, the Tribunal has taken a hyper technical approach in rejecting the application as

ultimately the petitioners wanted to restrict their claim to one under section 163-A of M.V. Act. Hence the application requires to be allowed. Insofar as filing of application at a belated stage is concerned, it is a settled position of law that the application can be filed at any stage of the proceedings. In the instant case, the petitioners intend to avail the compensation under section 163-A of M.V. Act, in which they are not required to prove their negligence. Hence the interest of justice would be met, if the petitioners are allowed to amend the claim petition.

8. For the aforementioned reasons, I proceed to pass the following:

ORDER

(a) The Writ Petition is ***allowed***.

(b) The impugned order dated 23.09.2022 passed in MVC No.858/2015 by the District and Sessions Judge, Vijayapur, is set aside.

Consequently, IA.No.VII filed by the petitioners is allowed.

(c) The petitioners shall file the amended claim petition within a period of two weeks from today.

(d) The respondent-Corporation is permitted to file objections, if any to such claim petition and thereafter the Tribunal shall regulate the proceedings and dispose of the claim petition in accordance with law.

Sd/-
(VIJAYKUMAR A. PATIL)
JUDGE

MSR
List No.: 1 Sl No.: 18
CT: PS