

**ORDER ON I.A.No.3 UNDER ORDER 1 RULE 10(2)**  
**R/W SECTION 151 CPC**

The respondent No.2 has filed I.A.No.3 under Order I Rule 10(2) read with Section 151 of CPC praying the Court to delete the name of the respondent No.2 from the petition as there was only standalone OD policy issued as on the date of accident ie., 22.06.2022 and there is no third party coverage.

2. In support of this application, an official of the respondent No.2 has filed his affidavit by stating that the first respondent has taken the policy in respect of the vehicle bearing registration No.KA-04-JY-1834 before the 3<sup>rd</sup> respondent vide policy No.3005/177439657/00/000 and it is valid from 08.08.2019 to 07.08.2024 to cover the third party liability. As the first respondent has taken the standalone OD policy from the respondent No.2, it covers only own damage and not a third party. As such, the respondent No.2 is not liable to indemnify the first respondent. There is no cause of action as on the date of accident against the respondent No.2. The petitioner has unnecessarily made the respondent No.2 as party in the proceedings. Hence, the respondent No. 2 has prayed to allow the application.

**3.** Petitioners have filed their objections to the above application by contending that the application is liable to be rejected, since the respondent No.2 Insurance Company has issued standalone OD Policy as on the date of accident and it covers the risk of pillion rider of the motorcycle and third party coverage is also there and hence, both the Insurance Companies are made as parties in the petition.

**4.** Heard the arguments of the counsels on both sides.

**5.** Now, the point that arise for my consideration is:

*“Whether the respondent No.2 has made out grounds to allow IA No.3?”*

**6.** After hearing the arguments and perusing the materials placed on record, I answer the above point in the “Affirmative” for the following:

### **REASONS**

**7.** The respondent No.2 contends that it has issued only standalone OD Policy in respect of the offending vehicle and there is no third party coverage to it. The respondent No.2 has produced the copy of the Policy issued by it and also the Policy issued by ICICI Lombard General Insurance Co., Ltd. The

said company is made as third respondent in the petition by the petitioners. On perusal of the Insurance Policy issued by the respondent No.2, it is noticed that it is only standalone Own Damage Coverage Policy for 2 wheeler, it does not cover the risk of third party, since no premium is collected towards the basic third party liability. As such, this policy issued by the respondent No.2 only covers own damage of the offending vehicle and not the risk of third parties.

**8.** On perusal of the policy issued by the third respondent in favour of the first respondent with respect to the offending motorcycle, it is noticed that it is a two wheeler policy, wherein premium has been collected towards basic third party liability. Even the respondent No.2 in its application contends that the third respondent has issued insurance policy in favour of the first respondent relating to the offending vehicle, which covers the risk of third party. Such being the case, as the policy issued by the second respondent in favour of the first respondent is a “OD Policy” which covers only own damage and not third party, I am of the opinion that the respondent No.2 is not a necessary party to the petition, in the presence of third respondent, who has issued the policy covering the risk of third party. As such, the respondent No.2 has to be deleted from the

petition as prayed by the respondent No.2. Though the respondent No.3 in the written statement contends that it has issued the policy in favour of the first respondent for own damage for the period 8.8.2019 to 7.8.2020 and liability only from 8.8.2019 to 7.8.2024, but it is contended that the pillion rider is not covered during the second year, more particularly at the time of accident. Whether the policy issued by the respondent No.3 covers the risk of the pillion rider or not cannot be decided at this stage, since it requires evidence of parties. As *prima facie*, policy issued by the respondent No.3 in favour of respondent No.1 relating to the offending vehicle covers the risk of third party, I am of the opinion that the matter in dispute between the parties can be adjudicated not in the presence of respondent No.2, but only in the presence of respondent No.3. Petitioners have generally made both the insurance companies as respondents No.2 and 3 without knowing the type of policy issued by those two insurance companies in favour of the first respondent relating to the offending vehicle. As such, I am of the opinion that I.A.No.3 filed by the respondent No.2 deserves to be allowed. Accordingly, Point No.1 is answered in the affirmative and I proceed to pass the following:

**ORDER**

IA No.3 filed by the respondent No.2 under Order 1 Rule 10(2) read with Section 151 of CPC is hereby allowed. The petitioner is directed to delete the respondent No.2 from the petition as it is not a necessary party to the petition.

No order as to costs.

**(SMT. B.V. RENUKA)**  
MEMBER, PRL.MACT, BENGALURU