

KABG010006742022



**IN THE COURT OF IV ADDITIONAL DISTRICT JUDGE
AND MACT-V, BELAGAVI, AT BELAGAVI**

-:PRESENT:-

Sri Mohan Prabhu

M.A. LL.M.

**IV Additional District Judge &
Addl MACT, Belagavi**

M.V.C. No.204/2022

Dated 19th day of MARCH-2025

Applicant/

Respondent No.2

The United India Insurance Co.
Ltd. & Another

[R2-R/by Sri.S.P.Chaugule, Adv.]

//Vs//

Opponent/

Petitioner

Smt. Rupali Sambhaji Bhuimbar

[R/by H.M.Shahapurkar., adv]

1.	Provision under which the application is filed	Under Order 1 Rule 10(2) R/w 151 of CPC
2.	Relief sought for	Issue summons to respondents No.3 & 4
3.	The date on which the application is filed	24.12.2024
4.	Number of the application	I.A.No.III
5.	The date on which the objections are filed by different opponents	24.12.2024
6.	The date on which the orders were passed on the said application	19.03.2025

ORDERS ON I.A. NO.III WITH REGARDING
TO WHETHER TO ISSUE NOTICE TO
PROPOSED RESPONDENTS NO.3 & 4 OR TO
REJECT I.A.NO.III

The learned counsel for the respondent no.2 filed I.A.No.III under Order 1 Rule 10(2) R/w 151 of CPC praying to issue summons to the proposed respondents No.3 & 4 who are the owner and insurer of vehicle bearing No.MH-14/HG-5968 which met with accident and implead them as necessary parties to this case for effective adjudication of this petition.

The proposed respondent No.3 is Smt.Vandana Vilas Mule, At Post Shirol, Tal:Khed, District: Pune-410505, State Maharashtra. The proposed respondent No.4 is Manager, Legal Reliance General Insurance Co. Ltd., III Floor, V.A.Kalburgi Square, Desai Cross, Deshpande Nagar, Hubli.

(2) In the memorandum of facts filed in support of I.A.III, the learned counsel for respondent No.2 has

stated that in this case the petitioner has contended that the deceased was driving the Truck bearing Reg No.MH/09-CU-6987 which belongs to Respondent No.1. The said truck dashed to another Vehicle bearing Regn.NO.MH-14/HG-5968. Hence there is no dispute about the involvement of these vehicles & collusion between these two vehicles. Vehicle bearing Reg.NO.MH-14/HG-5968 is owned by Proposed Respondent No.3 and insured with Proposed Respondent No.4. The deceased is a third party to the Proposed Respondent No.3 and Respondent No.4. In this case the Respondent No.2 has taken a specific contention by contending that as there is a collusion of two vehicles, the owner and insurer of the Vehicle bearing Reg.NO.MH-14/HG-5968 are necessary parties to this petition. The respondent No.2 has taken contention that this petition is bad for non joinder of necessary parties, hence the petition is not maintainable. The accident in question has taken

place due to rash and negligent driving of Vehicle bearing Regn.NO.MH-14/HG-5968 by its driver. Hence, it is necessary to implead the owner and insurer of this vehicle for effective adjudication of this petition. If the proposed Respondent NO.3 and 4 are impleaded in this case, no hardship will be caused to the Petitioner, on the other hand it will help this Tribunal for effective adjudication of this petition. If this application is rejected respondent No.2 will be put to very great hardship. Hence, on these grounds respondent No.2 prayed to allow I.A.No.III.

(3) Along with I.A.No.III, the learned counsel for respondent No.2 also paid P.F. and RPAD cover in order issue notice of I.A.No.III.

(4) The learned counsel for petitioner filed objection by contending that this application is filed under order 1 rule 10 (2) r/w sec 151 of C.P.C. is not maintainable. The application is not supported by affidavit of respondent No.2. I.A. filed under order 1

rule 10 of C.P.C. is not applicable to the present petition. This petition filed under section 163 - A of Motor Vehicle Act which deals with the accident arising out of use of vehicle, it is the choice of the petitioner to whom to implead as a parties. The respondent insurance company firstly not appeared before the court, hence placed ex-parte. This Tribunal passed the Judgment. After lapse of 1 year the respondent intentionally filed the Misc. Petition No.239/2023 in order to set aside the Judgment. This Tribunal allowed Misc. petition by imposing cost of Rs.3,000/- and directed the insurance company to co-operate the tribunal for disposal of the case expeditiously. The respondent filed this application in order to drag on the proceedings. This petition is a summary trial proceeding and it is the beneficial legislation made in favour of the victims who suffered the injury/death in Motor Vehicle Accident. The respondent cannot filed such application, because they got only limited defense

as the factum of accident is sufficient to prove the case of the petitioner. Hence, on these grounds the learned counsel for petitioner prayed for rejection of I.A.No.III.

(5) I have heard the arguments on the side of learned counsel for petitioner and learned counsel for respondent No.2. The learned counsel for petitioner relied on following Judgments.

1. The Judgment of Hon'ble Supreme Court of India At New Delhi reported in 2018 ACJ 1.
2. The Judgment of Hon'ble High Court of Karnataka, Dharwad Bench, reported in MFA No.101582/2017(MV).
3. The Judgment of Hon'ble High Court of Karnataka, Dharwad Bench, reported in MFA No.23740/2010 (MV).
4. The Judgment of Hon'ble High Court of Karnataka, Dharwad Bench, reported in MFA No.100375/2016 C/W MFA No.100145/2016 (MV).
5. The Judgment of Hon'ble High Court of Karnataka, Dharwad Bench reported in 2008 (2) K.C.C.R 675.
6. The Judgment of Hon'ble High Court of Karnataka reported in ILR 2008 KAR 959.

(6) The following points would arise for my consideration.

1 Whether this court can issue notice to I.A.No.III to the proposed respondents No.3 & 4 or directly reject I.A.No.III without issuing notice to respondents No.3 & 4?

2 What Order ?

(7) My findings to the above said points are as under:

Point No.1:- It is necessary to issue notice to respondents No.3 & 4 prior to passing final order on I.A.No.III.

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

REASONS

(8) **POINT NO.1:-** The petitioner has filed this petition under section 163-A of M.V.Act against the respondents No.1 & 2 who are the owner and insurer of the vehicle bearing Reg.No.MH-09/CU-6897. It is the case of the petitioner is that her brother Amrut was the driver of vehicle No.MH-09/CU-6897 which

belongs to respondent No.1. When he came driving the same from Haveri towards Belagavi on Pune-Bangalore road and reached Tarihal limits, near Hawa Valves Factory Hubli-Dharwad at that time, one Lorry which came from opposite direction driven by its driver in rash and negligent manner came totally wrong side of the deceased vehicle, at that time in order to avoid the accident between two vehicles Amrut Krishna Aagam took his vehicle towards right side and dashed to the vehicle No. MH-14/HG-5968. Due to this accident Sri.Amrut who sustained grievous Injuries on vital organs of the body, succumbed to the injuries when shifted to KIMS Hospital, Hubli. It is the contention of the petitioner is that this accident caused due to use and involvement of vehicle No. MH-09/CU-6897. But the respondent No.2 in the objection filed to the main petition would contended that since there are two vehicles involved in this case, the owner and insurer of the Vehicle bearing Reg.NO.MH-14/HG-5968 are

necessary parties to this petition. As the petitioner not impleaded the owner and insurer of the Vehicle bearing Regn.NO.MH-14/HG-5968, this petition is bad for non joinder of necessary parties. It is the contention of the respondent No.2 is that this accident occurred solely due to negligence on the part of the deceased driver against whom investigating officer of Hubli Rural police station has filed charge sheet for the offences punishable under section 279, 338, 304(A) of IPC and under section 3 R/w.180 of M.V.Act and also under section 185 of M.V.Act. Since the deceased himself being a tortfeasor, this petition is not maintainable. It is true that this tribunal pronounced ex-parte Judgment on 09.02.2023, but thereafter the Judgment came to be set aside in Misc.Petition No.239/2023 filed by respondent No.2. The respondent No.2 filed objections to the main petition. This Tribunal also framed issues. When the case posted for cross examination of PW1, at this stage the learned counsel

for the respondent No.2 moved this I.A.No.III under order 1 Rule 10(2) R/w.Section 151 of CPC praying to implead proposed respondents No.3 and 4. The learned counsel for the petitioner vehemently argued that when the petitioner filed the petition under section 163-A of M.V.Act, the insurance company has no right to raise the defense of plea of negligence of victim. He argued that it is left to the petitioner to implead any of the parties to the petition. He argued that the owner and insurer of the opposite vehicle is not necessary parties to this petition.

(9) The learned counsel for the petitioner has relied on the Judgment Hon'ble Supreme Court reported in 2018 ACJ 1, to contend that it is not open to the insurance company to raise the defense of negligence of victim. He relied on Judgment of Hon'ble High Court of Karnataka, Dharwad Bench in MFA No.101582/2017(MV) to contend that the insurer cannot raise defense of negligence against the victim

and escape liability. He relied on Judgment of Hon'ble High Court of Karnataka, Dharwad Bench in MFA No.23740/2010 (MV) to contend that in this case the Hon'ble High Court held that the petition under section 163-A of the Act is maintainable even in an accident involving two vehicles. He relied on Judgment of Hon'ble High Court of Karnataka, Dharwad Bench in MFA No.100375/2016 C/W MFA No.100145/2016 (MV), wherein it is held that the contributory negligence urged by the insurer would not sustain in view of Judgment of Hon'ble Supreme Court in Ramkhiladi and in Sunil Kumar case. He relied on Judgment of Hon'ble High Court of Karnataka reported in 2008 (2) K.C.C.R 675 to contend that the petition under section 163-A is maintainable when the accident has occurred due to the negligence of the victim. He relied on the Judgment of Hon'ble High Court of Karnataka reported in ILR 2008 KAR 959, wherein it is held that when two motor vehicles were

involved in the accident the claim petition under section 163-A of the Act is permissible, no matter the driver or owner of vehicle involved in the accident, may dispute his negligence in the matter.

(10) I have gone through these cited decisions. There is no dispute regarding the principles laid down by Hon'ble Supreme Court and Hon'ble High Court of Karnataka in all these cited decisions. There is no need to plead or prove the rash and negligence in the petition filed under section 163-A of M.V.Act. The claim petition can be filed based on the use and involvement of the motor vehicle. In the present petition, the petitioner has not made the owner and insurer of the vehicle No. MH-14/HG-5968 as a party even though the vehicle No. MH-14/HG-5968 is used and involved in this accident. According to the petitioner, the vehicle of the deceased went and dashed to the vehicle No.MH-14/HG-5968, as a result of which the deceased who was driving the vehicle bearing

No.MH-09/CU-6897 sustained grievous injuries and succumbed to the injuries on the way to the KIMS Hospital, Hubli. When there are two vehicles involved in accident and there is use and involvement of two vehicles, this Tribunal of the opinion that, the owner and insurer of both vehicles are necessary parties. No doubt, this Tribunal need not decide who was at fault or negligence in causing the accident. But, we have to decide whether there is use and involvement of vehicle or not. According to the petitioner herself there is use and involvement of two vehicles in this accident. One is vehicle No.MH-09/CU-6897 in which the deceased Amrut was proceeding as a driver and another vehicle No. MH-14/HG-5968 to which the deceased dashed by taking his vehicle to the right side. At this stage, this Tribunal cannot go into deep on merits of the case and to decide whether I.A.No.III is to be allowed or not. I.A.No.III can be decided after service of notice of I.A.No.III to proposed respondent No.3 and 4. At this

stage since there is clear pleading on the side of the petitioner herself in her petition to show that vehicle No.MH-14/HG-5968 also used and involved in this accident, this Tribunal of the opinion that the proposed respondent No.3 and 4 owner and insurer are necessary or proper parties to this petition. However, this opinion is not final, it can be decided only after serving notice to proposed respondent No.3 and 4, but without serving notice to proposed respondent No.3 and 4, at this initial stage itself this Tribunal cannot straight away reject I.A.No.III. It is necessary to issue notice of I.A.No.III to the proposed respondent No.3 and 4. Only after serving notice to the proposed respondent No.3 and 4, the final order on I.A.No.III can be passed. There is no sufficient grounds made out by the petitioner to straight away reject I.A.No.III without issuing notice to the proposed respondent No.3 and 4. Hence, I answered point No.1 in affirmative by holding that prior to passing the final order on I.A.No.III it is

necessary to issue of I.A.No.III to the proposed respondent No.3 and 4 as there is prima facie material to show the use and involvement of the vehicle No.MH-14/HG-5968.

(11) **Point No.2:-** It is made it clear that any observations made herein above are meant for to decide whether notice to be issued to the proposed respondent No.3 and 4 or to reject I.A.No.III and no baring on merits of I.A.No.III which to be decided after service of notice to proposed respondent No.3 and 4. In the result, I proceed to pass the following:

ORDER

***Issue notice of I.A.No.III to the
proposed respondent No.3 and 4 by
RPAD.***

(Dictated to the stenographer, transcribed and typed by her, revised and then pronounced by me in open Court on this the **19th day of March -2025**).

[Mohan Prabhu]
IV Addl District Judge and
MACT-V, Belagavi

[order is pronounced in the open court vide separate order]

ORDER

***Issue notice of I.A.No.III to the
proposed respondent No.3 and 4 by
RPAD.***

**IV Addl District Judge and
MACT-V, Belagavi**