

16.09.2023:

ORDER ON IA No.IV

I.A. No.IV is filed under Order 6 Rule 17 of CPC by the petitioners to amend the petition as follows;

On page No.1 in 1st para the words “injuries” is may be ordered to deleted and in that place insert word as “death of Sri.Mehabub @ Mehaboobsab Abdulkhadir Pendari, Age: 59 years”

On page No.1 to 5 wherever the word appearing as “injured” be ordered to delete and in that place insert word as “Original petitioner”.

On page No.2 at Column No.11 after the words “all over the body” the words ordered to be added “and died due to the said accidental injuries to spine, head and bedsores during course of treatment”

On page No.2 entire Column No.13 be deleted and the words to be inserted as "Petitioners spent an amount of Rs.50,000/- towards medical bill, hospital bill, transportation of dead body, funeral and other religious rites of the deceased".

On page No.2 at 14th Column the sentence "Yes Permanently physically disabled" ordered to be deleted and in that place insert the word as "Died due to accidental injuries".

On page No.3 Column No.19 and 20 the words appearing as "Not applicable" ordered to be deleted and in that place in Column No.19 insert the words as "Petitioner No.1(a) is the wife, petitioner No.1(b) 1(d) and 1(3) are sons and petitioner No.1(c) and 1(f) are the daughters and in Column No.20 insert the words as "legal heirs".

On page No.3 after 21 column the entire without number the entire para be deleted and in that place insert the words as "Calculate moderately and

modestly on all the counts such as mental agony, pain and suffering, love and affection, loss of dependency, loss of estate, transportation of dead body, funeral and other religious rites, loss of consortium, including special and general damages”

On page No.3 to 5 Column No.22 whichever the word”petitioner” appear be deleted and in that place insert the word as “Original petitioner”.

On page No.3 Column No.22 in 1st paragraph on line No.9 the sentence “as result petitioner sustained grievous injuries as mentioned in Column No.” after this sentence the sentence is to be inserted as “Due to accident the original petitioner was sustained grievous injuries and succumbed to the said accidental injuries due the course of treatment”.

On page No.4 at Paragraph No.3 last 5 lines after the words due t facial paresis, the said 5 lines be deleted and in that place insert the words as “ on

20.05.2022 the original petitioner was died due to above said accidental injuries and due to sudden death of original petitioner the petitioners have lost their complete dependency. Hence, all the petitioners are being put to great mental agony, pain and hardship. Hence petitioners are suffered mentally, physically and financially. “

On page No.5 in the verification column the name, age and occupation be deleted and in that place “the names, age and occupation of petitioner No.1(a) to 1(f) and to be added.”

2. In the accompanying affidavit the petitioner No.1(d) Mr. Mohammedgous S/o Mehabub Pendari has stated that the original petitioner his late father Mehabub Pendari had filed the petitioner for grant of compensation for the injuries sustained in the motor vehicle accident. During the pendency of the case, his father expired on 20.05.2022 due to the

injuries sustained by him in the accident leaving behind the legal heirs.

3. Further his father died on 20.05.2022 due to the accidental injuries caused to bedsores during the course of treatment. In view of death of their father during the pendency of this petition he came record and constrain to get amend the petition. In view of death of his father during the pendency of this petition the proposed amendment sought by him is very much necessary. The proposed amendment will not bring any surprise to other side. If the application is not allowed he would be put to hardship and unconvinced. Therefore, now it is necessary to amend the petition to insert the paras in the petition.

4. Respondent has filed objections to IA No.IV on the ground that petitioner Mehabubsab Pendari was aged 65 years on the date of accident as per wound certificate issued by Govt. Hospital, Bailhongal, and he sustained CLW injuries over nasal

bridge, CLW over forehead, CLW over superior orbito region and took treatment for 10 days at Govt. Hospital, Baihongal.

5. After discharge from the Govt. Hospital, Baihongal the injured has not taken treatment or admitted for the alleged injuries and he expired on 20.05.2022 due to old age not due to alleged injuries, as the alleged accident took place on 06.07.2018 after lapse of three years eight months expired and there is no post mortem conducted.

6. It is further contended that the amendment sought in the petition is not necessary as the deceased has not died due to alleged injuries and he died due to old age of 68 years at the time of death. Therefore, the application is liable to be dismissed.

7. Heard both sides and perused documents on record.

8. The following point arises for consideration;

1) Whether the proposed amendments under I.A no.IV is necessary for complete adjudication of the matter in controversy? If so what order?

9. My answer to the above point is in the affirmative for the following:

REASONS:

10. **Point No.1:-** By the proposed amendment the petitioners intends to insert the following paras that,

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On page No.3 after 21 column the entire without number the entire para be deleted and in that place insert the words as "Calculate moderately and modestly on all the counts such as mental agony, pain and suffering, love and affection, loss of dependency, loss of estate, transportation of dead body, funeral and other religious rites, loss of consortium, including special and general damages"

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11. This petition is filed for claiming compensation in respect of accidental injuries.

12. Admittedly, this petition was filed by the original petitioner seeking

compensation for the injuries sustained by him and during the treatment he died due to accident injuries. On perusal of the order sheet it is apparent that case was posted for evidence of petitioner and at this stage the IA has been filed. Earlier on death of the original petitioner IA was filed and the legal heir is permitted to come on record.

13. It is to be noted that any amendment of the application, which is filed before commencement of trial must be liberally considered and thereafter amendment cannot be permitted unless the petitioners shows due diligence and inspite of due diligence they could filed amendment application earlier.

14. The petitioner has to convince the court that the amendment has become necessary due to some change of circumstances which came into existence after filing of the petition or at least show and convince before the court that inspite of due diligence,

amendment could not be carried out earlier. It is also true that amendment, which takes away admissions, which changes the nature of the petition cannot be allowed.

15. In this case by the amendment the petitioner intends to insert facts that came into existence after the petition was filed. The original petitioner has died during pendency of the petition and his LRs are brought on record.

16. The objections of the respondent is that the original petitioner died due to age factor, and there is no nexus between his death and accident. But the said defence can be taken at the time of evidence and also elicited in the cross examination. Since LRs are brought on record amendment has become necessary.

17. Thus, in this case if the amendment is allowed there will not be caused any loss of hardship to the respondent.

18. Thus, amendment does not take away the rights accrued to the respondent. Therefore, I answer point under consideration in the affirmative and I proceed to pass the following:

ORDER

IA No.IV filed under Order 6 Rule 17 of CPC by the petitioner is hereby allowed with costs.

For amended petition by 20-10-2023.

Senior Civil Judge &
MACT, Bailhongal.