

ORDER ON I.A. No VII

1. The instant application has been filed by the respondent no.1(c) under Sec.151 of CPC seeking to reject the petition on the ground of maintainability.
2. The learned Counsel for the petitioners has filed statement of objections to the said application.
3. I have heard the learned Counsel LR's of the respondent and the learned Counsel for the petitioners.
4. After perusal of the records of the case, the following point would emerge for my consideration:
 1. Whether the application filed by the respondent no.1(c) is deserved to be allowed?
 2. To what order?
5. My findings to the above points are as under:

Point No.1: In the negative.

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

REASONS

6. **Point No.1:** In an affidavit accompanying with the application, the respondent no.1(c) has stated that as per the complaint and as per the police records and chief examination of P.W.1 it is clear that the accident in question has taken place solely due to the rash and negligent riding of the motor cycle by the deceased himself and the petition filed against the respondent i.e., the owner of the tractor and trailer is not at all maintainable and is liable to be rejected and accordingly, among other grounds he prays to reject the petition as it is not maintainable.

7. Per contra, the learned Counsel for the petitioners has filed the statement of objections. He has contended that the son of the petitioners died in the said accident and they are claiming the compensation in respect of the said accident and already charge sheet has been filed by the police in respect of the said accident against the offending tractor driver and he has further contended that the petition cannot be rejected as per the relief sought by the respondents and the respondents have not made any grounds to reject the petition and accordingly, among other grounds he prays to reject the application.

8. In view of the rival contentions put forth by the parties, now, let me see as to whether the application is deserves to be allowed.

9. The respondent no.1(c) has contended that the petition is not maintainable as the deceased himself is the tort feaser and on the other hand, the petitioners have contended that the petition is very much maintainable. I have perused the charge sheet which has been marked at Ex.P3 and it discloses that the deceased was also one of the accused persons and the respondent no.1(c) is also one of the accused persons. At this stage, this court cannot say that by whose default the accident has occurred and this court cannot say that the petitioners are not entitled any compensation. Further, it is the petitioners have to prove that the alleged accident has taken place on the fault of the driver of the tractor and trailer and the burden is on them to prove this issue before the court and the application filed by the respondent no.1(c) is pre mature one and the petition cannot be rejected only on the ground mentioned in application. If the petition is rejected, the petitioners are put to untold hardship which cannot be compensated in terms of money and on the other hand, the respondents will not be put to any hardship. Further, the learned Counsel for the respondent no.1(c) has produced one citation reported in C.M.A.No.1690/2021 and I

have perused it and this citation is not applicable to the facts on hand at this stage. Accordingly, I answer this point in the negative.

10. **Point no.2**: In view of my discussion made supra, I proceed to pass the following:

ORDER

I.A.No.VII filed by the Applicant/Respondent no.1(c) under Sec.151 of the Code of Civil Procedure is hereby rejected.

There is no order as to costs.

(Dictated to the Stenographer, directly on the computer, corrected and then pronounced by me on this the 24th day of December, 2024)

(Sri. Hanamantarao R.Kulkarni)
Senior Civil Judge & JMFC.,
Hunagund.