

**ORDER ON I.A. No.VII**

1. The instant application has been filed by the learned Counsel for the respondent no.2 under Sec.169(2) of M.V.Act r/w Order XI Rules 12 and 14 of CPC to issue notice to the Investigating officer Sri.Suresh H Talwar,CPI, Kustagi police station in Crime No.13/2018 to produce certified certificate of policy schedule of offending vehicle lorry bearing no.RJ-13/G-8342 and to say regarding the document as on the date of the accident.

2. In spite of giving sufficient time, the petitioners have not filed any objections to the said application. Hence, the objections to the said application are taken as not filed.

3. I have heard the learned Counsel for the respondent no.2. In spite of giving sufficient time, the learned Counsel for the petitioners have not argued on the matter. Hence, their arguments is taken as not addressed.

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.2 is deserves 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 a memo of facts appended to the application, it is stated by the learned counsel for the respondent no.2 that Sri.Suresh H Talwar,CPI, Kustagi police station has investigated and collected the documents in the accident in C R No.13/2018 of Kustagi police station in Kustagi circle and the certificate of policy schedule of offending vehicle lorry bearing no.RJ-13/G-8342 as on the date of the accident is very necessary document and he is the custodian of the certificate of policy schedule and prays to issue notice to the said CPI to produce the certificate of policy and to say regarding the document as on the date of the accident and accordingly, among other grounds prays to allow the application.

7. In view of the contentions put forth by the learned counsel for the respondent no.2, now, let me see as to whether the notice to produce certificate of policy has to be issued to the said CPI or not. In the case on hand, the learned Counsel for the respondent no.2 has contended that the respondent no.2 has not issued the insurance policy to the respondent no.1 and as on the date of the accident there was no insurance of contract between the

respondent no.1 and the respondent no.2 and he is not liable to pay the compensation to the petitioners on the other hand, the petitioners have contended that the respondent no.1 is the owner of the lorry and the respondent no.2 is the insurer of the said lorry for which the respondent no.2 is liable to pay the compensation to the petitioners. According to Sec.106 of Indian Evidence Act, when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. According to this section, whether the insurance policy was issued to the respondent no.1 or not and whether the alleged lorry got insurance policy or not at the time of the accident is within the knowledge of the respondent no.2 and the respondent no.1 respectively. It is pertinent to note that the respondent no.2 has to prove that it has not issued any insurance policy and there was no contract of insurance at the time of the accident. It is pertinent to note that the IO has investigated the matter and he has filed the charge sheet on who has committed the offence of negligence driving and caused death. Further, the evidence of IO is not required to prove the fact of there was no contract of insurance at the time of the accident. It is the insurance company has to show that there was no contract of insurance between the insurance company and the respondent no.1 at the time of the alleged accident. Hence, the issuance of the notice to the IO does not arise at all. Accordingly, I answer this point in the Negative.

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

**ORDER**

I.A. No.VII filed by the learned Counsel for the respondent no.2 under Sec.169(2) of M.V.Act r/w Order XI Rule 12 and 14 r/w Sec.151 of CPC is hereby rejected.

There is no order as to costs.

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