

ORDER ON I.A. No II

1. The instant application has been filed by the learned Counsel for the petitioners under Order I Rule 10(2) of the Code of Civil Procedure seeking to implead the proposed respondent no.4 in the petition.

2. In response to the notice on I.A.No.II, the proposed respondent no.4 has entered appearance before the Court through its counsel and filed the objections to the said application.

3. I have heard the learned Counsel for the petitioners and the proposed respondent no.4.

4. After perusal of the records of the case, the following point would emerge for my consideration:

1. Whether the proposed respondent no.4 is a proper and necessary party?

2. To what order?

5. My findings to the above points are as under:

Point No.1: In the Affirmative.

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

REASONS

6 **Point No.1:** In memo of facts appended to the application, it is stated by the learned Counsel for the petitioners that the respondent no.2 is the owner of the offending vehicle and on that time of the accident the said vehicle was insured by the proposed respondent no.4 and further he has stated that the application is allowed no harm will cause to the proposed respondent no.4 and on the contrary he will be put untold hardship which cannot be compensated in terms of money and accordingly, he has requested to allow the application.

7. The learned counsel for the proposed respondent no.4 has contended that the application filed by the petitioner no.1 is not maintainable either under law or facts of the case. He has contended that the petitioner no.1 in collusion with the respondent no.1 is making new case by seeking the permission of the court to implead the proposed respondent no.4 as party to the proceedings and he is not liable to pay any compensation amount to the petitioners and as the deceased himself was tort-feaser without having driving licence driven the uninsured vehicle of the respondent no.3 and accordingly among other grounds he has prayed to reject the application with costs.

8. In view of rival contentions put forth by the both the parties, now, let me see as to whether the presence of proposed respondent No.4 is necessary for the just adjudication of the case. Admittedly, the petitioners have

not mentioned the name of the proposed respondent no.4 in the petition under Sec.166 of MV Act. But, later on the learned Counsel for the respondent no.1 has produced the document pertaining to insurance policy and the insurer of the vehicle is proposed respondent no.4. The proposed respondent no.4 has contended that he is not liable to pay the compensation amount to the petitioners as the deceased himself was the tort-feaser and the deceased was not having valid driving licence. It is pertinent to note that whether the proposed respondent no.4 is liable or not and whether the deceased was having valid driving licence or not requires trial. At this stage, it cannot be decided these issues raised by the proposed respondent no.4. It is pertinent to note that if this application is not allowed, the petitioners will be put to untold hardship which cannot be compensated in terms of money and if this application is allowed no harm will be caused to the proposed respondent no.4. Therefore, the presence of proposed respondent no.4 is necessary for the just adjudication of the case. Accordingly, I answer this point in the Affirmative.

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

ORDER

I.A.No. II filed by the learned counsel for the petitioners under Order I Rule 10 of Code of Civil Procedure is hereby allowed and he is permitted to

implead the proposed respondent no.4 in the petition and he is permitted to amend the petition and furnish the amended petition.

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