

IN THE COURT OF THE I ADDITIONAL SENIOR CIVIL
JUDGE & J.M.F.C., HUBBALLI

Present:

SMT. SARVAMANGALA K.M.,
B.A. LL.B.,
I Additional Senior Civil Judge and JMFC.,
Hubballi.

MVC. No.347/2025

Dated this the 05th day of May, 2026

Petitioner/s : Sri. Surendra S/o Shankar
Poojary and another.

.Vs.

Respondent/s : Mr. Deepak K and another.

PARTIES TO I.A. No.II

Applicant/s : The General Manager,
ACKO General Insurance Co.
Ltd.

.Vs.

Opponent/s : Sri. Surendra S/o Shankar
Poojary and another.

- i. Provision under which : Under Order I Rule 10(2)
application is filed of CPC
- ii. Relief sought for : Seeking to dismiss the
petition against the
respondent No.2 in the
interest of justice and
equity.

- iii. *The date on which : 27.03.2026
application is filed*
- iv. *Number of the application : II*
- v. *The date on which : Nil
objections are filed by
different opponents*
- vi. *The date on which orders : 05.05.2026
were passed on the said
application*

ORDERS ON I.A. No.II

The counsel for respondent No.2 filed an application under Order 1 Rule 10(2) of C.P.C., seeking to dismiss the petition against the respondent No.2 in the interest of justice and equity.

2. On the other hand, the counsel for petitioners have not filed objections to said application.

3. Heard both side.

4. The following points that arise for my consideration is :

1) Whether the respondent No.2 is not the proper and necessary party to fair adjudication of the matter?

2) What order?

5. My answers to the above points is as follows:

Point No.1: In the Affirmative.

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

REASONS

6. **Point No.1:** *This is the petition filed by the petitioners seeking an order of compensation an account of death of their mother due to the Road Traffic Accident.*

7. *When the matter was set down for cross examination of P.W.1, the counsel for respondent No.2 filed application seeking an order to dismiss the petition against the respondent No.2.*

8. *In the annexed affidavit the respondent No.2 averred that, on 31.12.2024 the accident took place due to the involvement of the vehicle bearing No.KA-14/EK-9794. The petitioner pleaded negligent act of the said vehicle rider hence made a party of respondent No.2 as an insurer. As on the date of accident i.e., on 31.12.2024 the said vehicle was not insured with this respondent. Therefore, the respondent No.2 is not necessary party int his case. Hence, the question of indemnification to the respondent No.1 will not arise against by this respondent No.2, the Court may strike out this respondent No.2 for improperly joined as party in this petition. Therefore, this respondent No.2 is not bounded for the present petition claim. Hence, the Court strike out this respondent as allowed, no loss or hardship will be caused to the petitioner. Hence, prayed to allow the application.*

9. Admittedly no objection to the said application by petitioner.

10. On perusal of the charge sheet and other materials available on record, it clearly discloses that as on the date of the accident, the offending vehicle was not covered under any policy of insurance issued by respondent No.2. The petitioner has neither filed objections to the present application nor produced any document to establish that the said vehicle was insured with respondent No.2 as on the date of the accident.

11. It is a settled principle of law that an insurer can be fastened with liability only when there exists a valid and subsisting policy of insurance covering the offending vehicle as on the date of the accident. In the absence of such contractual relationship, The insurer cannot be treated as a necessary or proper party to the proceedings.

12. In the present case, in view of the absence of any material to show existence of a valid insurance policy and in the light of the charge sheet indicating otherwise, this Court is of the considered opinion that respondent No.2 is neither a necessary nor a proper party to the present proceedings. Accordingly, the application filed by respondent No.2 under Order I Rule 10 (2) under Section 151 of CPC deserves to be allowed. and I answer the **point No.1 in the Affirmative.**

13. **Point No.2:** *In view of the aforesaid reasons, I proceed to pass the following;*

ORDER

The IA No.II Under Order I Rule 10(2) read with Section 151 of CPC filed by the respondent No.2 is hereby allowed.

The name of the insurance company arrayed as respondent No.2 in the present petition is ordered to be deleted from the cause title.

The claim petition shall proceed only against the remaining parties.

For necessary deletion and amended petition.

Call on 15.05.2026.

*(Dictated to the Stenographer directly on computer, script corrected and then pronounced by me in the Open Court on this the **05th day of May, 2026**)*

sd/-

*(Smt. Sarvamangala K.M.)
I Addl. Senior Civil Judge and JMFC.,
Hubballi.*