

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.221/2024

Dated this the 05th day of May, 2026

Petitioner/s : Kiran S/o Manoharsa Jituri.

.Vs.

Respondent/s : Premanath S/o Kasghappa
Chikkatumbal and another.

PARTIES TO I.A. No.XII

Applicant/s : National Insurance Co. Ltd.

.Vs.

Opponent/s : Kiran S/o Manoharsa Jituri.

- i. Provision under : Under Order XVI Rule 1 and
which application is 2 R/w Sec.151 of CPC.
filed
- ii. Relief sought for : Seeking an order to issue
witness summons to the
Investigation Officer Sri.
M.B. Pattar, ASI, Hubli
North Traffic, Hubli to
produce the documents.

- iii. *The date on which : 06.11.2025
application is filed*
- iv. *Number of the : XII
application*
- v. *The date on which : 08.01.2026
objections are filed
by different
opponents*
- vi. *The date on which : 05.05.2026
orders were passed
on the said
application*

ORDERS ON I.A. No.XII

The counsel for respondent No.2 has filed an I.A. No.XII under Order XVI Rule 1 and 2 R/w Sec.151 of CPC, seeking an order to issue witness summons to the Investigation Officer Sri. M.B. Pattar, ASI, Hubli North Traffic, Hubli to produce the documents.

The documents sought to be produced before the Hon'ble Court by the witness:

1. CDR details pertaining to the Mobile No.8139978949 and 9731401582 of the accused Abdul Razak Ajmat, who was driving the offending vehicle.

2. Mobile Tower location of Mobile No.8139978949 and 9731401582 of the accused Abdul Razak Ajmat, who was driving the offending vehicle 28.11.2023 i.e., the date of occurrence of RTA from 6-30 pm to 8.00 pm.

3. CCTV footage confirming the accused Car KA-25/AB-3405 near the accident spot.

2. The petitioners have filed objections to the said application.

3. Heard arguments. The counsel for Petitioner relied upon the decision of Hon'ble High Court of Karnataka in W.P. No.109754/2016 in between National Insurance Co. Ltd., Vs. Smt. Zulekhabi W/o Late. Muktar Ahmed Bateri and others.

4. The following point is arises for disposal off the application :

“Whether the reliefs sought by the respondent No.2 in the application, can be granted?”

5. My finding to the above point in the Negative, for forgoing;

REASONS

6. In the memo of facts in support of the present application it is stated that, the claim petition has been filed by the petitioner seeking compensation on account of injuries sustained in the alleged RTA dated:28.11.2023 contending that the accident has occurred due to the rash and negligent driving of the Car bearing No.KA-25/AB-3405 by its driver. The claim petition is opposed by the respondent No.2 on the ground that the Car bearing No. KA-25/AB-3405 is falsely implicated in the accident in collusion with the petitioner, owner of the vehicle and the investigation officer of the crime. As per FIR the accident has occurred on 28.11.2023 at about 7:00 p.m. to 7:25 p.m. However, no complaint has been lodged immediately and belatedly complaint has been lodged on

29.11.2023 2 6:15 p.m. Even in the belated complaint there is no whisper about the registered number of the vehicle nor name of the driver is forthcoming. The FIR is against unknown vehicle driven by unknown driver. The respondent No.2 has specifically taken a contention of fraud against petitioner in implanting the insured vehicle as such in order to discharge its burden of non-involvement of the vehicle in the accident and fraud practiced, the documents sought to be produced are very much essential. Since there is an allegation of collusion against the Investigation Officer (IO) in involving the insured vehicle in the accident as such examination of the IO of crime is very much necessary and essential.

It is further submitted that, the IO of the crime not complied with the mandatory provisions of amended Central Motor Vehicle Rules. Hence, the examination of the said witness is also necessary. The respondent insurance Company has pleaded the fraud against the petitioner, the registered owner of the vehicle as well as the investigating office of the crime as such the burden lies upon the person who alleges the fraud hence, in order to substantiate the contention of fraud leveled against the persons mentioned above the documents sought by the respondent insurance company are very much necessary for adjudication of the dispute completely and effectively. If the present application is not allowed great harm and injury will be caused to this respondent and at the same time no hard or injury will be caused to the other side if the present application is allowed. Hence, prayed to allow the application.

7. The objections of the petitioners is that, the respondent No.2 company has filed this I.A. for dragging of the matter and harass the petitioner in this case. The application is not maintainable, the petitioner already produce necessary document for this case mandatory. The said witness is not a mandatory. The respondent Insurance Company set up a presumption mind with imaginary concept for escape from liability or to give compensation to the petitioner. Unnecessarily postponing the case on one or the other reasons it is resjudicata. It is further contended that, the petitioner file only for compensation. It is summery proceedings case not strict prove the case. This is not a criminal case to entire criminal proceeding done in compensation case. The Respondent No.2 is third party they don't have right to escape from liability. The memo of facts is not a proper reason and not procedural aspect. The respondent No.2 since many days taking dates and now trying to harass to the petitioner without any remedy. Hence, prayed to dismiss the application.

8. On perusal of the materials available on record it is noticed to the court that, This application is filed by respondent No.2 under Order XVI Rule 1 and 2 R/w Sec.151 f CPC seeking to summon the Assistant Sub-Inspector, Hubballi North traffic police station, Hubballi for production of the above stated documents.

The contention of respondent No.2 is that the complaint was lodged belatedly and no whisper of the registered vehicle, that the FIR was registered against an unknown vehicle and unknown driver, and that subsequently the injured, vehicle

has been falsely implicated in collision with the police. On that basis, it is contented that the above documents are necessary to establish fraud and non-involvement of the insured vehicle.

9. Per contra, the learned counsel for the petitioner contends that the application is based on mere presumptions and is filed only to protract the proceedings. It is further contended that the insurance company must independently prove its defence and cannot seek to summon police witnesses or collect evidence from Criminal proceedings as a matter of right and they have relied upon the judgment of the Hon'ble High Court of Karnataka in WP No.109754/ 2016, in between National Insurance Company Ltd. v. Smt. Zulekhabi and others. Wherein the Hon'ble High Court of Karnataka in the decision cited supra has categorically held that the insurance company cannot, as a matter of right, insist on summoning witnesses from criminal proceedings and must independently prove its defence before the tribunal.

10. Moreover, the documents now sought, such as CDR and tower location are not shown to have a direct nexus with the Core issue unless foundational facts are first established. In the absence of such foundations, allowing the application would unnecessarily widen the scope of enquiry and delay the proceedings.

11. As regards summoning of the Investigating Officer, it is always open to the respondent to examine its own witnesses. It is not in dispute that the claim petition is to be decided on the basis of preponderance of probabilities and not on strict

rules of evidence as applicable to criminal trials. The burden lies on the insurance company to establish its defence including the plea of non-involvement of the injured vehicle. In the present case, except making bald allegations of fraud and collusion, respondent No.2 has not placed any prima facie material to justify summoning the CDR details, tower location, and CCTV footage. The request appears to be in the nature of a roaming and fishing enquiry to disprove the petitioner case.

12. Further, However, the present application is not confined to summoning a Specific witness for a defined purpose but seeks collection of multiple categories of evidence without demonstrating necessity. Therefore, this Tribunal is of the opinion that the application lacks merit and is liable to be rejected. Hence, I answer **point No.1 in the negative.**

13. **Point No.2:** For the above said reasons, I proceed to pass the following :

ORDER

I.A. No.XII filed by the learned counsel for the Respondent No.2 under order 16 Rule 1 and 2 R/w Sec.151 of CPC is hereby dismissed

No order as to costs.

(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.