

IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC
AT JEWARGI

PRESENT: Sri. Sandeep A. Naik B.A., LL.B.,(Spl.)
Senior Civil Judge & J.M.F.C.,
Jewargi.

Dated This the 5th Day of March-2025

M.V.C.NO.795/2022

PETITIONER : Smt. Laxmibai
W/o Mallamma,
Age: 60 years, Occ: Coolie,
R/o Kanakdas Chowk,
Jewargi Town, Tq: Jewargi,
Dist: Kalaburagi.

.....(By. Sri. S.A.K., Advocate)

V/s.

RESPONDENTS: 1. Shankar
S/o Kishan Rathod,
Age: Major, Occ: Business,
R/o Jeesoli Tanda, Tq: Aland,
Dist: Kalaburagi.

2. The New India Assurance Co., Ltd,
Through its divisional Manager,
Near SBI Bank, Sangameshwar Colony,
S.B Temple road, Kalaburagi.

..... (R-1 By. Sri.MIS., Advocate)

..... (R-2 By. Smt.TK., Advocate)

PARTIES TO I.A. NO.II

APPLICANT/ : The New India Assurance Co., Ltd
RESPONDENT No.2
V/S
OPPONENT/ : Smt. Laxmibai
PETITIONER

i.	Provision under which the application is filed	U/o 1 Rule 10(2) R/w Sec.151 of CPC
ii.	Relief sought for	To deletion of the party
iii.	The date on which the application is filed	18-08-2023
iv.	Number of the application	IA No.2
v.	The date of which the objections are filed by different opponents	16-09-2023
vi.	The date on which the orders were passed on the said application	05-03-2025

ORDER ON I.A.No.2 FILED BY RESPONDENT NO.2 U/O. 1

Rule 10 (2) R/W SEC.151 OF C.P.C.

1. The respondent No.2 has filed this application seeking deletion of respondent no.2 from the present case.

2. The official of the respondent No.2 company sworn to the affidavit stating that claimant has filed this petition against owner and insurance company on account of vehicle bearing registration No.KA-32 4257 involved in the accident. The

respondent No.2 company contended that vehicle involved in the present case was not insured with it as on the date of accident. The company has issued policy No.68030031190200007683 to the vehicle bearing registration No.KA-32 4257 and said policy was valid from 05-12-2019 to 04-12-2020, whereas accident took place on 02-07-2019 and as on that day there was no policy existing therefore there is no cause of action to maintain claim petition against it. Therefore petition is not maintainable as against respondent No.2. Therefore, prayed to delete the name of respondent No.2 from the present case.

3. Copy of the application served on the other side.

4. The petitioner filed objection to the application contending that investigating officer filed charge sheet against the driver of respondent No.1 and even respondent No.1 executed Indemnity bond at the time of release of the vehicle and gave all the relevant documents. On basis of the material documents the investigating officer filed charge sheet against driver of respondent No.1 but did not mentioned violation of any provisions of Motor Vehicle Act. There are no genuine and reasonable grounds to allow the application. The respondent No.2 with an intention to harass petitioner and to avoid the claim filed this application. On all these contentions petitioner prayed to reject the application.

5. On considering the I.A., affidavit, objection and argument of both sides. The point that would arise for my consideration is as under:

1. Whether the respondent No.2 has made out sufficient grounds to allow the application and whether IA No.2 filed by the respondent No.2 U/o 1 rule 10(2) R/w 151 of CPC is deserves to be allowed?
2. What order?

6. My answer to the above points are as under:

Point No.1: In the Negative.

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

REASONS

7. **Point No.1:-** Admittedly, petitioner has filed this petition seeking compensation on account of sustaining grievous injuries in a road traffic accident, which took place on 02-07-2019 involving vehicle bearing registration NoKA-32 4257. The respondent No.2 filed this application and sought deletion from the proceeding on the grounds that there was no valid insurance coverage for the vehicle involved in the accident as on the date of accident, whereas the petitioner contends that dispute regarding the existence or non existence of insurance coverage is a matter of trial that require evidence and cannot be summarily decided at this stage. It is well settled that disputed facts which require evidence must be adjudicated only after trial. Allegation regarding the absence of insurance coverage falls within this ambit and cannot be decided without proper evidence.

8. At this stage it is useful to refer a decision reported in (2013) 5 SCC 397 in between **Thomosan Press (India) Limited Vs. Nanak Builders and Investors P. Limited and Others**, wherein the Hon'ble Supreme Court held that Order 1 Rule 10(2) of CPC empowers the court with a discretion to add any party at any stage of the proceedings if their presence is necessary for effectively and completely adjudicating upon the matters involved.

9. Even in another decision reported in **(1999) 3 SCC 267 in between D. Ramachandran Vs. R.V Janakiraman** and Others Wherein it was held that in all cases of preliminary objection, the test is to see whether any of the relief prayed for could be granted to the appellant if the averments made in the petition are proved to be true. For the purpose of considering preliminary objection, the averments in the petition should be assumed to be true and the court has to find out whether those averments disclose a cause of action or a triable issue as such the court cannot probe into the facts on the basis of the controversy raised in the counter. Thus it is clear that the aspect regarding existence or non existence is a matter of trial and it requires a full-fledged trial for its adjudication. Thus the prayer of respondent No.2 company to delete from the present case cannot be entertained at this stage of the proceedings. Therefore, application filed by the respondent No.2 is deserves to be rejected. Hence, **I answer point No. 1 in the Negative.**

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

:: ORDER ::

The IA No.2 filed by the respondent No.2 company U/O 1 Rule 10(2) R/w Sec.151 of C.P.C., is hereby dismissed.

No order as to costs.

Call on for objection to main petition by
28-03-2025.

(Dictated to the Stenographer directly on Laptop, typed by him, corrected and then pronounced by me in the Open Court on this 5th Day of March-2025).

(Sandeep. A. Naik)
Senior Civil Judge & MACT-XV,
Jewargi.