

KAMS080014122022



**IN THE COURT OF PRINCIPAL SMALL CAUSES & SENIOR  
CIVIL JUDGE & M.A.C.T. AT MYSURU.**

**Presided Over by SRI AFTHAB.K**

**M.V.C./848/2022**

**Dated this the 15<sup>th</sup> day of March, 2025**

**Plaintiff/s:**

Sri. Girisha S/o. Late Siddaraju,  
Age: 25 years, R/at No.79, Jayanagara,  
Mysuru-570014.

**(By Sri. N. Basavaraju, Advocate)**

Vs.

**Defendant/s :**

1. Sri. Devaiah P.U. S/o. Utthaiah P.M.,  
Age: 40 years, R/at Faith Chinchona Estate,  
Post box No.59, Kutta, Virajpete taluk,  
Kodagu district-571250.  
(Driver of car bearing reg No.KA-12/Z-7953)

2. The Manager,  
IFFCO TOKIO General Insurance Co. Ltd.,  
Divisional office: Akshay Bhandar,  
New Kantharaj Urs road, Kuvempunagara,  
Mysuru.  
(Owner of car bearing reg No.KA-12/Z-7953)

**(R1- Exparte)**

**(R2- Sri. Jagannath Suresh Kumar, Advocate)**

\* \* \* \*

**-: Parties to IA.No.IV :-**

Smt. Sindu (natural guardian of the petitioner)

**Applicant**

V/s

Sri. Devaiah P.U. and another

**Opponent**

**ORDERS ON IA-IV**

The application under consideration i.e., IA IV is filed by the next friend of the petitioner under Section 151 of CPC seeking that the evidence led by petitioner herein be discarded in the interest of justice and equity.

2. In support of the application the next friend of the petitioner has filed her affidavit contending that the petitioner has already lead his chief examination and has got exhibited documents, however, the petitioner is suffering from mental disorder and loss of memory, as such, his evidence be discarded and the applicant be permitted to lead evidence. On these amongst other grounds, it is prayed that the application be allowed.

3. Upon service of copy of application, the respondent No.2 company filed its objections contending that the application is neither maintainable under law nor facts. Further, the petitioner has filed the petition seeking compensation for the injuries sustained by him in the road traffic accident which occurred on 02.05.2022 and has let in his evidence has also got exhibited documents and when the matter was set down for cross examination the application under consideration is filed. Further, the

medical records reveal that the petitioner was initially treated at CHC Gonikoppa, thereafter at KIMS Hospital, Madikeri and thereafter at K.R. Hospital, Mysuru but the petitioner went home against the advise of the doctors and later from 18.05.2022, the petitioner underwent treatment as an inpatient at DRM Hospital, Mysuru till 25.05.2022.

3.1. Further, perusal of the order sheet reveals that on 02.06.2023 the petitioner examined himself as PW.1 and got exhibited Ex.P1 to P5, thereafter on 21.06.2023 he got exhibited Ex.P8 to P11 and on 07.07.2023 he exhibited Ex.P14 to P16. Further on 29.12.2023 the IA seeking appointment of next friend was filed on the ground that the petitioner has poor memory and dizziness and on 19.01.2024 a medical certificate issued by doctor who is not the treating doctor is produced in which the doctor opined that the petitioner had severe cognitive changes and does not have intellectual capacity and was not in a state of mind to depose before the court. Hence the application lacks merits and is not supported by sufficient proof.

3.2. Further, in the application it is not disclosed since when the petitioner is mentally disabled, as such, the application is based on false surmise. On these amongst other grounds, it is prayed that the IA be dismissed.

4. Heard the learned counsel for the applicant and respondent No.2 on IA No.IV.

5. On careful perusal of application and the affidavit in support of it, the following points arise for my consideration:

*1. Whether the applicant has made out sufficient grounds to discard the chief examination of PW.1?*

## *2.What order?*

6. After carefully perusing the records available before it at this stage, this court proceeds to answer the afore-raised points for consideration as under:

- (a) *Point No. i* : *In the affirmative.*  
(b) *Point No. ii* : *As per the final orders,*  
for the following reasons.

### **REASONS**

#### **POINT No.(i) :**

7. At the very outset it is necessary to note that the application is filed by the next friend of the petitioner seeking that the evidence already let in by petitioner by examining himself as PW.1 be discarded on the ground, which can be precisely put as, inability to depose before the court. In other words, it is the contention of the applicant who is the next friend of the petitioner that the petitioner is incapable of deposing before the court especially facing cross-examination due to loss of memory and mental disorder. In this regard, it is relevant to note that the IA-III filed by petitioner seeking appointment of next friend for the purpose of enabling the petitioner to contest the matter effectively as the petitioner is not in a position to protect his interest owing to mental disorder and loss of memory came to be allowed by this tribunal after holding enquiry. It is in the light of this development that the application under consideration must be appreciated and disposed of.

8. Furthermore, perusal of the order sheet reveals that though the petitioner had examined himself as PW.1, even before the matter could be

taken up for cross examination of PW.1, the application under order XXXII Rule 3 of CPC came to be filed seeking that the petitioner be permitted to contest the matter through next friend as the petitioner is mentally incapable of contesting the petition. Now the next friend of the petitioner seeks that the evidence of PW.1 be discarded as he is being represented by his next friend due to his mental illness.

9. The main objection of the respondent No.2 company revolves around factual aspects, but one aspect which the respondent No.2 company has clearly admitted is that according to the doctor the petitioner who has already examined as PW.1 is suffering from poor memory and dizziness, as such, he does not have intellectual capacity and state of mind to depose before the court. This certificate issued by the doctor would itself suffice for this tribunal to allow the application as the other aspects contended by the respondent No.2 company regarding the fact that the said certificate was issued by a non treating doctor and the petitioner does not suffer from any such intellectual incapacity which debars him from deposing before the court are points to be considered during trial.

10. It is necessary to note that, the cross examination of PW.1 is yet to commence and the reason why this aspect is important is had it been the case that the cross examination of PW.1 had completed and during his cross examination had given away admissions in his evidence and to overcome the same his evidence is sought to be discarded, then the scenario would have been different and the application would be viewed from a different perspective which is not the case here as the application seeking discarding of the evidence is sought even before commencement of cross examination. Perhaps, considering the fact that doctor has opined

that petitioner is intellectually incapable and is not in a state of mind to depose, this tribunal is of the opinion that it is in the best interest of both the parties so also the administration of justice that the deposition of the PW.1 must be discarded and insisting on PW.1 to depose despite his mental condition would be irrational.

11. For the foregoing reasons, this tribunal is of the firm opinion that as the petitioner is being represented by his next friend due to his mental illness, it would be futile to retain the deposition of PW.1 on record, more so where the next friend of the petitioner is ready to lead fresh evidence and *hence point No.I is held in the affirmative.*

12. **Point No.ii:**

In view of the fact that point No.1 is held in the affirmative, this court passes the following:

**ORDER**

*“IA-IV under Section 151 of CPC filed by the next friend of the petitioner is hereby allowed.*

*Consequently the deposition of PW.1 stands eschewed from records and is discarded.”*

*(Directly typed by stenographer, corrected and then pronounced by me in the open court, this the 15<sup>th</sup> day of March, 2025)*

**(AFTHAB.K.)**  
Prl. Judge, Court of Small Causes  
& MACT., Mysuru.