

KAMS500002162021



**IN THE COURT OF SENIOR CIVIL JUDGE & JMFC
NANJANGUD**

Present : **Sri. Kamalaksha D., B.A., LL.B.,**
Senior Civil Judge & J.M.F.C.,
Nanjangud.

Dated this the 15th day of May 2025

M.V.C./344/2021

Petitioner: Padma W/o Chikkanna,
aged about 31 years,
residing at Kalale Village,
Chikka Beedhi,
Nanjangud Taluk,
Mysuru District-571118.

-V/s-

Respondents:

1. Ibrahim S/o late Shafi Ulla,
aged about 32 years,
residing at Ward No.2,
Devaraja Badavane,
Saraguru Town,
H.D.Kote Taluk,
Mysuru District-571121.
2. HDFC ERGO General Insurance
Company Limited,
II Floor, Mysuru Trade Centre,

Opposite to K.S.R.T.C. Suburb
Bus-Stand, Bengaluru-Niligiri Road,
Mysuru-570001.

I.A. IV

Applicant : The Manager H.D.F.C. Ergo General
Insurance Company Limited.
.. Respondent No.2
(By Sri. P.A.Sanath Kumar, Adv.)

-V/s-

Opponents : Padma
... Petitioner
(By Sri. H.M.Mahesha, Adv.)

ORDERS ON I.A.IV FILED UNDER ORDER
I RULE 10 R/W SECTION 151 OF CPC

The 2nd respondent has filed application to implead one Raghu K.R., S/o Rangaswamy Nayaka, Kalale Village, Nanjangud Taluk, Mysuru District as 3rd respondent, because he is the owner of Passenger Auto bearing No.KA-06-C-5966.

2. In the affidavit it is sworn that, the police authority registered case against the driver of passenger

auto as accused No.2 in which the petitioner was travelling, because the said auto driver without having vehicle insurance carrying passengers more than its capacity. The driver-cum-owner of the passenger auto bearing No.KA-06-C-5966 has been charge-sheeted under Sections 196, 194(a) of IMV Act. Hence, it is necessary to implead the owner of passenger auto bearing No.KA-06-C-5966 as the proposed 3rd respondent. Hence, prayed to allow the said application.

3. Per contra the petitioner filed objections to the said application mentioning that the application is to be dismissed, because it is not maintainable either in law or facts. The petitioner submits that, the accident caused only due to the rash and negligent driving of the car bearing registration No.KA-05-MQ-6113 by the 1st respondent and not by the driver of the autorickshaw. Further the jurisdictional police after investigation have filed charge-sheet against the 1st respondent and not by the driver of the autorickshaw. Mere made the owner of the

autorickshaw as accused No.2 does not mean that the accident caused by accused No.2. The accident caused solely due to rash and negligent driving of the said car by the 1st respondent. As such, the application for impleading of the owner of autorickshaw as 3rd respondent is not at all required. It is further submitted that, the 1st respondent has taken number of adjournments for filing objection in the above case and later filed the statement of objections. But at the time of filing the objection statement in the above case, the 2nd respondent has not stated anything regarding non-joinder of necessary party. But after the evidence of petitioner and when the case is posted for cross of P.W.1, the 2nd respondent has come up with this baseless application with a sole intention to drag on the proceedings and cause hardship to the petitioner. The proposed respondent No.3 is not a necessary party to the petition. Hence, prays to reject the application.

4. Heard. Perused pleadings and materials placed on record. The points that arise for consideration are:

1. Whether the applicant/ respondent No.2 has made out sufficient grounds to implead the owner of autorickshaw to be 3rd respondent?
2. What order ?

5. The above points are answered as follows :-

Point No.1 : In the affirmative

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

REASONS

6. **Point No.1:-** As per Order I Rule 10(2) of C.P.C., a necessary party is a person who ought to have been made a party to the suit or proceedings and in his absence no effective decree would have been passed and if necessary party is not impleaded in the suit, the suit itself is liable to be rejected. However, a proper party is a party though not a necessary party, however, his presence would enable the court to completely and effectively adjudicated upon the lis pending before it, though he need not be a person against whom the decree is made. The said principle of law has been discussed by the Hon'ble High Court of Karnataka in

the case of Chinnaswamy Gowda Vs. Shivaramu C.M. and others reported in 2024 (1) KLJ 617.

7. The contention of the 2nd respondent that, Nanjangud Traffic Police Authorities have registered a case against the driver of the autorickshaw bearing No. KA-06-C-5966 by showing as accused No.2, mentioning that the driver without having insurance carrying the passengers more than its capacity. The fault of driver of autorickshaw was one of the grounds for the accident. However, the petitioner deliberately not filed case against the owner of the autorickshaw.

8. I have referred the gist of the charge-sheet. In it the police have mentioned that the driver of the passenger auto bearing No.KA-06-C-5966 allowed to travel passenger more than its capacity and the said passenger autorickshaw was not insured. Therefore, the police have filed charge-sheet against the 2nd accused means the owner of the autorickshaw for violation of Section 196 and 196(a)

of IMV Act. The charge-sheet clearly shows that, the owner of the autorickshaw being its driver permitted to travel more than 5 passengers that too without having policy to the said vehicle. The first negligence committed by the driver-cum-owner that he allowed to travel more than 5 passengers means he was driving the said autorickshaw having more than mentioned capacity to travel passenger in it and also not obtained policy from any insurance company. The violation of the traffic rules is outstanding negligence by the owner-cum-driver of the autorickshaw bearing No.KA-06-C-5966. However, the petitioner has not made the owner-cum-driver of the passenger autorickshaw as respondent in the petition. Even though the charge-sheet is filed against the drivers of both the vehicles, the petitioner opted to file petition against only driver of the offending vehicle bearing No.KA-05-MQ-6113.

9. If the auto driver of the passenger auto is not impleaded as party or 3rd respondent, it will cause incomplete trial against the wrong doer, because as

mentioned above charge-sheet shows that the driver-cum-owner of the vehicle allowed to travel more than 5 passengers in the auto, so he violated the traffic rules as well as not to insure the said vehicle. So, the responsibility of the owner of the passenger vehicle has to be counted in the trial. As mentioned supra, the owner of the passenger auto driver has been made accused in the charge-sheet for violation of some traffic Rules. But the petitioner did not opt to make him as party. The averments of the petition show that the petitioner was travelling in passenger auto of proposed 3rd respondent, that too over crowded auto. So, the 2nd respondent claims that the accident was also occurred due to the fault of the driver of autorickshaw. His negligency has to be counted in calculation of compensation amount. Hence, **point No.1** is answered **in the affirmative**.

10. **Point No.2:-** In view of the findings on the above point, this Court proceeds to pass the following:

ORDER

I.A.IV filed by the applicant/ respondent No.2 under Order I Rule 10 r/w 151 of C.P.C. is allowed.

The petitioner is directed to implead the owner-cum-driver of the passenger autorickshaw bearing No.KA-06-C-5966 as 3rd respondent.

(Dictated to the stenographer, transcribed by her on computer, revised, corrected and then pronounced by me in open Court on this the 15th day of May 2025).

(Kamalaksha D.)

Senior Civil Judge & J.M.F.C.,
Nanjangud.