

Orders on I.A.No.III

Respondent No.2 filed the I.A.No.III under Order I Rule 10 of C.P.C. and seeking permission to implead the proposed parties as respondent No.3 and 4. The Divisional Manager namely Marut Narayana Pai filed the affidavit and stated that the matter is posted for cross - examination of petitioner. Our counsel gone through the

file and came to know that the Police Officer registered the case against the owner and rider of Scooty bearing Reg.No.KA-19-ES-8725. In view of that, the owner and rider of the Scooty are necessary parties to the petition. Hence, prayed to allow the application.

2. As per the contention of respondent No.2, the Scooty bearing Reg.No.KA-19-ES-8725 was involved in the accident. The Police Officer registered the case against the owner and rider of the Scooty bearing Reg.No.KA-19-ES-8725. Ex.P1 – F.I.R., Ex.P8 – charge sheet in which appears that Police Inspector of Kaup Circle registered the criminal case against the owner and rider of Scooty bearing Reg.No.KA-19-ES-8725 and also issued AIR with respect to that. F.I.R., charge sheet and AIR are apparently shows that the proposed parties are owner and rider of the Scooty. The notice was issued to the proposed parties. They have not been appearing before the court and not opposed the application. The

petitioners did not made the owner and rider of the alleged vehicle as parties to the petition. Such being case, in the opinion of Tribunal, the proposed parties are necessary parties to the petition. As such, pass the following:

ORDER

I.A.No.III filed by the respondent No.2 under Order I Rule 10 of C.P.C. is hereby allowed. Hereby permitted the respondent No.2 to implead the the proposed parties as respondent No.3 and 4.

Petitioners are directed to carryout amendment and file amended petition.

Orders on I.A.No.IV

Petitioners filed the I.A.No.IV under Order XIV Rule 5(2) of C.P.C. and requested to recast the issue No.1.

2. Respondent No.2 opposed the application by filing the objection.

3. Heard. Perused the papers, following points are taken to adjudicate the application:

1. Whether the petitioners have made out grounds to consider the application?
2. What order?

4. Answers to the above points as under:

Point No.1 : In the affirmative;

Point No.2 : As per the final order

for the following:

REASONS

Point No.1 :

5. The petitioner No.1 namely Smt. Deepa Devendra Kotian filed the affidavit and stated that her husband died due to motor vehicle accident. She and other family members filed the claim petition under Sec.163A of Motor Vehicles Act. This court framed the issues and put the burden on her and

other petitioners to prove the negligence and rash driving of the vehicle. The issue No.1 framed by this court is against to the principles of Sec.163A of Motor Vehicles Act. Hence, prayed to recast the issue No.1.

6. In the objection, respondent No.2 stated that, the application filed by the petitioners is not maintainable. The recasting of issue is not necessary. The grounds assigned by the petitioners is not valid. Hence, prayed to reject the application.

7. As per the contention of petitioner No.1, she and other petitioners filed the petition under Sec.163A of Motor Vehicles Act. Respondent No.2 did not deny the same. Further contention of the petitioner No.1 is this court framed the issues and put the burden on her and other petitioners to prove the negligent driving of offending vehicle. The issue No.1 is against to the principles of Sec.163A of Motor Vehicles Act. Respondent No.2 has been silent about this fact is concerned. Admittedly, petitioners filed petition under

Sec.163A of Indian Motor Vehicles Act. On plain reading of Sec.163A, the petitioners claimed the petition on no fault liability. Such being the case, it is not necessary to put the burden on petitioners to prove the rash and negligent driving of offending vehicle. As such, in the opinion of Tribunal, petitioners have made out grounds to consider the application. As such, answered ***point No.1 in the affirmative.***

Point No.2:

In view of the above, pass the following:

ORDER

I.A.No.IV filed by the petitioners under Order XIV Rule 5 of C.P.C. is hereby allowed. Consequently, hereby recasted the issue No.1.

To carryout amendment and to file the amended petition.