

MHKO010004002018



ORDER BELOW EXH.43 IN M.A.C.P. NO.62/2018.

The opponent No.5 moved this application for giving direction to the applicants for adding the owner and insurer of the car which was driven by the deceased at the time of incident. It is submitted that objection about non joinder of necessary party is raised by the opponent No.5 in written statement. This application is opposed by applicant with submission that all the persons responsible for the accident, owner of the vehicle and insurer of this vehicle as joined as a party in the proceeding. The application is moved to delay the proceeding.

2. I heard submission for learned counsel for both sides. The learned counsel for opponent No.5 submitted that the claim of the applicant is denied by the opponent No.5 who is insurer of the Wagner car involved in the incident which was owned by opponent No.3. It is submitted that when allegation are denied and when it is contended that the deceased was on fault in that case his vehicle owner and insurer is necessary party. Opponents counsel relied case of **United India Insurance Co.Ltd. Vs. Vedula Ravi and others, 2008 ACJ 2624** and **National Insurance Co. Ltd. Vs. Pushpaben Hirabhai Mutchadia & anr, II (2004) ACC 516**. The aspect of contributory negligence necessity of addition of parties whose presence in the matter is necessary, the power of the Court to add necessary parties which discussed in both the citations. On the other hand, applicant's counsel submitted that the claim is filed against necessary persons and presence of the insurer and owner of the car vehicle driven by the deceased is not necessary. As per his submission the Court has to decide fault against whom the claim has to

be made and who are liable to pay the compensation. The case of New India Assurance Co. Ltd. & Anr. Vs. Sabitri Devi & Others is relied, in which the driver of the bus was not considered as necessary party when the accident was between the bus and the motorbike.

3. It appears that the deceased was driven vehicle that time the dash occurred between the truck and the tempo vehicle and then the deceased car dash on it. Now, it is contention of opponents that there is contributory negligence. It is for the opponent to prove the same and to lead evidence to that effect. If it is proved then the contribution regarding negligence on the part of deceased will be decided by the Court. The amount of compensation can be deducted if it is found that there is contributory negligence on the part of the deceased also. If the cited case perused carefully then the claim is required to be lodged against the persons responsible for the incident. In my view, in present case there appears no situation which will show that the presence of the insurer and owner of the vehicle driven by the deceased is necessary. Considering the same application is liable to be rejected. Hence, the following order.

ORDER

The application Exh.43 is rejected.

Date-26/07/2022.
Kolhapur.

(S.P. Gondhalekar)
District Judge-4, Kolhapur.