

**IN THE HIGH COURT OF KARNATAKA AT BANGALORE**

**DATED THIS THE 23<sup>RD</sup> DAY OF JANUARY 2003**

**BEFORE**

**THE HON'BLE MR. JUSTICE B. PADMARAJ**

**CIVIL REVISION PETITION NO.271/2003**

**BETWEEN:**

Kallappa D. Tambadamani,  
Age: 45 years, Occ: Agriculture,  
R/o. Mammigatti Village,  
Tq. & Dist: Dharwad.

**..PETITIONER**

(By Sri. Sanjeev V. Hanchate, Adv.)

**AND:**

1. Shivaputrappa,  
S/o. Sharanayya Doddamanavar,  
Age: Major, Occ: Truck Driver,  
R/o. Tejashrinagar,  
Dharwad.
2. Appaji,  
S/o. Ningappa Belgamanavar,  
Age: Major, Occ: Transport Business,  
R/o. Plot No.2, Mahadawar Road,  
Shahapur,  
Belgaum.

3. United India Insurance Co. Ltd.,  
Madras by its Divisional Office,  
Hubli.  
Policy No: 71005/119/24/1/004/115/89,  
Valid upto 07.03.1990.

**...RESPONDENTS**

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This C.R.P. is filed U/S.115 of CPC against the Order dated 29.8.2002 passed on I.A.No.III in MVC.No.1306/1989 on the file of the Pri. Dist. Judge & MACT., Dharwad, dismissing I.A.No.III filed u/O 6 Rule 17 of CPC for amendment of the cause title.

This C.R.P coming on for Orders on I.A., this day, the Court made the following:

**ORDER**

Heard the arguments of the learned Counsel for the Petitioner both on the question of limitation as well as on the question of Admission and carefully perused the entire case records including the impugned order made by the Trial Court.



2. On the facts and in the circumstances of the case, I find that the delay of 29 days in filing the Revision Petition has been reasonably and satisfactorily explained, hence delay in filing the Revision Petition is condoned. I.A.No.1/03 is accordingly allowed.

3. By the impugned order, the Trial Court has dismissed the application for amendment filed by the Petitioner under Order 6 Rule 17 of CPC. Hence, this Revision Petition.

4. The Petitioner herein having sustained certain injuries in a motor vehicle accident which occurred on 24.06.1989, preferred a claim petition before the Claims Tribunal by impleading certain persons as Respondents 1 to 3. The 1<sup>st</sup> Respondent was stated to be the driver of the offending vehicle, the 2<sup>nd</sup> Respondent was the owner of the offending vehicle and the 3<sup>rd</sup> Respondent is the insurer of the offending vehicle. While preferring the claim petition before



the Claims Tribunal, the petitioner impleaded one Sri. Appaji, S/o. Ningappa Belgamanvar, Resident of plot NO.2, Mahadwar Road, Shahapur, Belgaum as the owner of the offending vehicle as respondent no.2 in the claim petition. During the pendency of the Petition, the Petitioner herein made an application under order 6 Rule 17 of CPC being I.A.No.3 to amend the Claim Petition so as to correct the name and address of the Respondent No.2 as : Sri. Appaji, S/o. Ningappa Balavankar, Age: Major, Occ: Transport Business, Resident of Haliyal, Dist: Uttara Kannada.

5. The said amendment was sought for on the ground that due to oversight, wrong name and address has been shown in the claim petition in respect of the owner of the offending vehicle. The said application of the Petitioner having been dismissed by the Claims Tribunal below by the impugned order, the Petitioner has preferred this Revision Petition.




6. While assailing the impugned order made by the Trial Court and also while placing reliance upon the two decisions of the Hon'ble Supreme Court and one of this Court <sup>As reported in</sup> ~~namely~~ ILR 2002 Karnataka page 5055 (SC) (Sampath Kumar v/s Ayyakannu & another) & 2001(2) SCC Page 474(Hindustan Lever Ltd., v/s Director General [Investigation & Registration] & another) of the Hon'ble Supreme Court and ILR 2002 Karnataka 4667(Ramappa v/s Shivantrappa Adisappa Navaiagatti & others) of the learned Single Judge of this Court, the learned Counsel for the Petitioner has vehemently contended that the Courts should be very liberal in granting the amendment applications in order to do substantial justice between the parties. He also contended that the Trial Court was not justified in dismissing the application of the petitioner when no harm is going to be caused to the other side by allowing such application and on the other hand it is the petitioner who will be seriously prejudiced if the application is not granted.



7. Having heard the submissions of the learned Counsel for the Petitioner and also having carefully perused the three decisions relied upon by the learned Counsel for the Petitioner, the short question that would arise for consideration at this stage is ***"whether the impugned order made by the Trial Court warrants any interference by this Court in revision?"***

8. In the instant case, it is not in dispute that the Petitioner/claimant had filed an application under order 6 Rule 17 of CPC whereby he sought to delete the name of the wrong person and to add a right person to the claim Petition. This is very clear from the nature of the application made by the Petitioner before the Claims Tribunal. Now the question is *"whether the provision invoked by the Petitioner for seeking such amendment is correct and proper?"* In my view having regard to the nature of the relief sought for by the Petitioner/claimant, it is not order 6 rule 17 which applies but it is order 1 rule 10 (1) of CPC which applies. This is



because even according to the Petitioner/Claimant, the Claim Petition has been instituted in the name of a wrong person namely the original Respondent No.2 and in his place the Petitioner wants to substitute the name of a right person. In the fact situation, it is the provisions of order 1 rule 10 applies because it is a case where the original Respondent no.2 has been improperly joined, whose name has to be struck out or deleted and in his place the right person is to be added as a party, who by oversight has not been joined and whose presence before the Court is necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the matter. It may be stated even at the cost of repetition that initially the claim petition was filed may be under some bonafide mistake against a wrong person and now the petitioner having realised his mistake wants to add another person in order to completely adjudicate the claim preferred by him. That being so, it is not Order 6 Rule 17 which applies, but it is order 1 rule 10 of CPC which applies to the fact situation. It



is no doubt true that mere invoking of wrong provision of law will not disentitle the party from seeking the right relief. But then when an application is filed under order 1 rule 10 of CPC, it must always be passed by keeping in mind the provisions contained in Section 21 of the Limitation Act which <sup>pro</sup> describes "where after the institution of a suit a new plaintiff or defendant is substituted or added, the suit shall as regards him, be deemed to have been instituted when he was so made party". That apart whenever a new party is to be added to the proceeding, a notice is to be issued to the party who is sought to be impleaded in the proceedings. Therefore, the procedure that is required to be followed in the matter of Order 1 Rule 10 of CPC is altogether different from the one that is prescribed for Order 1 Rule 17 of CPC. Under the circumstances, when the Petitioner/claimant did not make an appropriate application seeking appropriate relief, the trial Court was right in dismissing the application of the Petitioner. Under the circumstances, therefore, though on a different reasoning, the impugned order made





by the Trial Court warrants no interference by this Court in revision. Consequently, the Revision Petition filed by the Petitioner is liable to be dismissed and it is accordingly dismissed. It is however made clear that if the Petitioner herein makes an appropriate application seeking appropriate relief before the Trial Court, the same will be considered in accordance with law by the Trial Court, notwithstanding the dismissal of the application filed by the Petitioner under Order 6 Rule 17 of CPC and confirmed by this Court in revision. With these observations, **the Revision Petition filed by the Petitioner stands dismissed.**

**Sd/-  
Judge**

**bb**