

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 5<sup>th</sup> DAY OF SEPTEMBER 2003

BEFORE

THE HON'BLE MR.JUSTICE M.F. SALDANHA

CRP.2656/2003 C/W CRP.2711/2003

BETWEEN:

1. IN CRP.2656/2003:

M/s.Safe Express Pvt. Ltd.,  
A company registered under  
The Companies' Act 1956 and  
having its Registered and Head  
Office at Safex Cargo Complex,  
No.8, Mahipalpur Extension,  
New Delhi 110 037, and among  
other places, having a Unit at  
Vikram Apartment, Ground  
Floor, Navbhar Road, Mulund  
East, Bombay-400 081 and  
Functioning also through their  
Agent M/s Blue Dart Aviation,  
is also called as Blue Dart Express  
Ltd., at Trinity Complex,  
Trinity Circle, M.G. Road,  
Bangalore-560 001. ...

PETITIONER

[By Sri. R. Ravi, Adv. for petitioner]

2. IN CRP.2711/2003:

M/s Blue Dart Express Ltd.,  
A company registered under

the Companies' Act 1956, and  
having its Registered Office  
at Trinity Complex,  
Trinity Circle, M.G. Road,  
Bangalore-560 001.  
Herein represented by its  
Manager. ..

PETITIONER

[By Sri. R. Ravi, Adv. for petitioner]

AND:

M/s New India Assurance Co. Ltd.,  
Subsidiary of the General Insurance  
Corporation of India, having its  
Registered and Head Office at  
M/s New India Assurance Building,  
At No.87, M.G. Road, Fort,  
Bombay-400 001, and, among  
other places a Divisional Office  
at II Floor, Nandalekha Building  
at No.10/13, Queen's Road,  
Bangalore-560 052, and herein  
Represented by its Divisional  
Manager. ..

COMMON RESPONDENT

These CRPs are filed under Sec.115 CPC praying to set  
aside the order dated 30.07.2003 passed on I.A.No.II in  
O.S.No.1285/1999, and order dated 02.08.2003 passed on  
I.A.No.I in O.S.No.1291/1999 respectively, on the file of the  
learned XXX Addl. City Civil Judge at Bangalore, and to allow  
the said IAs.

The petitions coming on for admission this day, the court  
made the following common order:

## ORDER

Heard petitioners' learned advocate. His submission is that in the event of any liability being held against the petitioners who are the defendants to the suit, that they would be entitled to claim reimbursement from their Insurance Company because of the insurance cover that they have taken out. Petitioners' learned advocate submits that if that eventuality takes place, the petitioners <sup>do not</sup> desire to fight one more round of litigation which may arise if the Insurance Company does not honour its commitment under the policy. Prima facie, this anxiety is misplaced for the simple reason that if the insurance company <sup>has</sup> indemnified the petitioners against any such claims or losses, then the insurance company will have to honor those claims. In any event, whether or not the petitioners are liable is the only issue before the Court and that is between <sup>the</sup> plaintiffs and defendants and the insurance company has nothing to do with regard to the merits. Under these circumstances, and within the framework of the law the trial court was justified in holding that the insurance company

is not a necessary party nor can the insurance company be compulsorily added on to the present litigation. I have already clarified the position that the petitioners-insurers who back them up under the insurance <sup>policy</sup> company would have to honour their commitments under the policy and consequently, the anxiety of the petitioners is totally misplaced. Under these circumstances, no interference is called for with the impugned orders. The CRP to stand disposed off.

Sd/   
Judge

sub.