



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMPMO No.695 of 2025
a/w CMPMO No.35 of 2026
Reserved on: 04.06.2026
Decided on: 19.06.2025

1.

CMPMO No.695 of 2025

United India Insurance Co. Ltd.

....Petitioner
- Versus
- Maisha Aggarwal & others

...Respondents
2.

CMPMO No.35 of 2026

United India Insurance Co. Ltd.

....Petitioner
- Versus
- Maisha Aggarwal & others

...Respondents

Coram
Hon'ble Mr. Justice Romesh Verma, Judge
Whether approved for reporting? Yes

For the petitioner:

Mr. Ashwani Sharma, Senior Advocate
with Mr. Ishaan Sharma, Advocate.

For the respondents:

Mr. Vishwas Kaushal, Advocate, for
respondent No.1.

Mr. Vijay Sharma, Advocate, for
respondent No.2.

Romesh Verma, Judge

The present petitions arise out of the impugned order dated 26.09.2025, as passed by learned Motor Accident Claims Tribunal, Kullu, District Kullu, H.P., whereby application filed by the present petitioner under Order 1 Rule 10 CPC read with

Section 151 of CPC for impleadment of Project Director, National Highway Authority of India, Project Implementation Unit Bagla, Muhal Chakkar, P.O. Nagchala, District Mandi, H.P. through Varun Chari, presently working as Project Director and Director of KMC Construction Limited at door No.1-80/40/SP/58-65, Shilpa homes layout, near Meenakshi Deloitte Gachibowli, Hyderabad, as party respondents has been dismissed.

2. The facts which emerge for filing the present petitions are that Maisha Aggarwal, daughter of Prashant Aggarwal, being minor, through her grandfather, filed two claim petitions before the Motor Accident Claims Tribunal, Kullu on account of deaths of her mother Smt. Dhanwanti and her brother Sh.Chinmay Aggarwal. They died in motor vehicle accident, which took place at 6 Mile (near Pandoh), District Mandi, H.P. while they were travelling in a vehicle bearing No.HP-31B-1985, due to rash and negligent driving of respondent No.2.

3. As per the averments as made in the claim petitions, it was averred that the accident took place on 11.08.2023, at about 7:45 PM at 6 Mile (near Pandoh) District Mandi, H.P. It has been averred in the claim petitions that on 11.08.2023, claimant/respondent No.1 along with her mother Smt. Dhanwanti and brother, Chinmay Aggarwal, was travelling from Kullu to

Sunder Nagar. When they reached at 6 Mile, District Mandi, on account of heavy rain, large hanging boulders/rocks were falling from hillside. Respondent No.2 was fully aware that stones and boulders were falling and could hit the vehicle, even then he tried to cross the sliding portion of the National Highway by driving the vehicle in a rash and negligent manner. In the meantime, a large hanging boulder/rock fell over the vehicle, due to which the claimant/respondent No.1 sustained minor injuries, but Smt. Dhanwanti and Chinmay Aggarwal sustained multiple grievous injuries.

4. After the accident, the mother of the claimant was seriously injured and she was taken to PGI Chandigarh. However, during the course of her treatment, she died on 12.08.2023 at Fortis Hospital, Chandigarh. Her brother, Chinmay Aggarwal, was declared dead on arrival by the doctors on duty. Consequently, claimant/respondent No.1 filed two different claim petitions bearing Claim Petition No.66 of 2024, titled *Maisha Aggarwal vs. Prashant Aggarwal & another*, and Claim Petition No.67 of 2024 titled *Maisha Aggarwal vs. Prashant Aggarwal & another*.

5. The claim petitions, as preferred by claimant/respondent No.1, were duly resisted by the present petitioner/insurance company. Preliminary objections with regard

to maintainability, cause of action etc., were raised in the reply filed to the claim petitions. It was averred in the reply that the construction/cutting was being conducted on road and no SOP was maintained at the work site in accordance with the guidelines and SOPs laid down by the Ministry of Highways. It has been averred in the petition that the NHAI and its contractors KMC Construction Ltd. were made party to the initial FIR, which clearly indicates the negligence of the NHAI and its contractor KMC constructions Ltd. Therefore, it was prayed that the petitions be dismissed by imposing costs.

6. During the pendency of claim petitions filed by respondent No.1, the present petitioner in both the claim petitions, filed applications under Order 1 Rule 10 of CPC read with Section 151 of CPC for impleadment of the Project Director, National Highway Authority of India, Project Implementation Unit Bagla, Muhal Chakkar, P.O. Nagchala, District Mandi, H.P. through Varun Chari, presently working as Project Director as respondent No.3 in the claim petitions and Director of KMC Construction Limited at Door No.1-80/40/SP/58-65, Shilpa Homes layout, near Meenakshi Deloitte Gachibowli, Hyderabad, as respondent No.4 in the claim petitions.

7. In the applications, it was averred by the present petitioner that on 11.08.2023 due to the negligence of NHAI, shooting stones were falling from hillside. If NHAI had constructed proper breast wall/retaining wall at the place of accident, the accident could not have occurred and as such, the insurance company wants to add National Highway Authority of India and Director of KMC Construction Ltd. as party respondents in the proceedings.

8. The said applications were duly resisted by claimant/respondent No.1 by filing reply raising therein the objections with respect to maintainability, cause of action etc. It was prayed that the applications, as filed by the insurance company, deserve to be dismissed.

9. Learned MACT-II, Kullu, vide its order dated 26.09.2025 dismissed the applications as filed by the Insurance Company in both the claim petitions.

10. Feeling dissatisfied, the present petitioner/Insurance Company has filed CMPMO Nos.695 of 2025 & 35 of 2026 before this Court against the rejection of the applications for impleadment of National Highway Authority of India and Director, KMC Construction Ltd as party respondents.

11. It is contended by Mr.Ashwani K, Sharma, learned Senior Counsel, duly assisted by Mr.Ishaan Sharma, Advocate, for the petitioner/Insurance Company that the impugned orders as passed by learned MACT-II, Kullu, dated 26.09.2025 are erroneous in the eyes of law and the same deserve to be quashed and set aside. He further submitted that the National Highway Authority of India and Director, KMC Construction Ltd. are necessary parties for the adjudication of the claim petitions. Therefore, after allowing the present petitions, the applications which were filed by them before the learned MACT-II, Kullu, deserve to be allowed.

12. On the other hand, Mr. Vishwas Kaushal, Advocate, has defended the impugned orders as passed by MACT-II, Kullu, H.P.. He has submitted that the MACT-II, Kullu, has rightly determined the point in controversy and after following the legal process of law has rightly come to the conclusion that the respondent being *dominus litis* is within his right to add or delete any party in the proceedings. He further submitted that, while exercising powers under Article 227 of the Constitution of India, this Court will not interfere in the well reasoned order as passed by the learned MACT-II, Kullu.

13. I have heard learned counsel for the parties and have also gone through the case file.

14. The claimant/respondent No.1, Maisha Aggarwal, instituted two claim petitions on account of death of her mother Smt. Dhanwanti and her brother Chinmay Aggarwal. Both of them died in accident, which took place on 11.08.2023 at 7:45 PM at 6 Mile, near Pandoh, District Mandi, H.P. On account of the death of her mother, respondent No.1/claimant has sought compensation to the tune of Rs.25,00,000/-. Similarly, on account of death her brother, Chinmay Aggarwal, the claimant also sought compensation to the tune of Rs.25,00,000/-

15. The claim petitions as preferred by the claimant/respondent No.1 have been resisted by the Insurance Company by raising objection with respect to maintainability. On merits, all the averments, as raised in the claim petitions, have been refuted and denied. The applications have been filed by the petitioner/Insurance Company for the impleadment of National Highway Authority of India and Director, KMC Construction Ltd. on the ground that they are necessary and proper party in the present proceedings.

16. It is the case of learned Senior Counsel for the petitioner that both the proposed respondents are necessary and

proper party and no effective order or judgment can be passed in their absence.

17. On the other hand, it is the contention of respondent No.1/claimant that as the *dominus litis*, she is well within her right to array any person as a party respondent. Consequently, she cannot be compelled to join the additional proceedings or to contest the case against those proposed respondents. Learned counsel for the claimant has taken this Court to the provisions of Section 168 of the Motor Vehicles Act, (for short, "the Act") which read as follows:

"168. Award of the Claims Tribunal. - (1) On receipt of an application for compensation made under section 166, the Claims Tribunal shall, after giving notice of the application to the insurer and after giving the parties (including the insurer) an opportunity of being heard, hold an inquiry into the claim or, as the case may be, each of the claims and, subject to the provisions of [section 163] may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be:

(2) The Claims Tribunal shall arrange to deliver copies of the award to the parties concerned

expeditiously and in any case within a period of fifteen days from the date of the award.

(3) When an award is made under this section, the person who is required to pay any amount in terms of such award shall, within thirty days of the date of announcing the award by the Claims Tribunal, deposit the entire amount awarded in such manner as the Claims Tribunal may direct.

18. A perusal of provisions of Section 168 of the Act reveals that it empowers the Tribunal to pass an award as against the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be. Therefore, it is clear that an award could be passed only as against an insurer or owner or driver of the vehicle. The authority, who is empowered with the laying or maintenance of the road, cannot be mulcted with the liability under the Motor Vehicles Act. The Motor Accident Tribunal is just a statutory authority under the Motor Vehicles Act and it does not have any jurisdiction to entertain the tortious claim as against any other person who had not been named under Section 168 of the Motor Vehicles Act. Therefore, as rightly pointed out by learned counsel for claimant/respondent No.1 that, as per the provisions of the Motor Vehicles Act, the Tribunal can pass the award only against the insurer or owner or driver. Therefore, it is clear that no award can be passed against the 3rd respondent in the claim petition. Consequently, the

contention, as raised by learned senior counsel for the petitioner, that the impleadment of National Highway Authority of India and Director KMC Construction Ltd. is necessary, does not hold good and deserves to be rejected.

19. While deciding the application under Order 1 Rule 10 of CPC, this Court has to satisfy two tests for determining the question as to who is a necessary party. The tests are (1) there must be a right to some relief against such party in respect of the controversies involved in the proceedings; (2) no effective decree can be passed in the absence of such party. The claimant/respondent No.1 is the *dominus litis*. It is the choice of the claimant/respondent No.1 to whom she intends to add as party defendant. In the present case also, the petitioner has failed to establish any right, to the relief which has been sought. The petitioner has failed to corroborate that no effective decree can be passed in absence of such party.

20. The Hon'ble Apex Court in ***Gurmit Singh Bhatia vs. Kiran Kant Robinson and others, (2020) 13 SCC 773*** has held as follows:

"5.2 An identical question came to be considered before this Court in the case of Kasturi (supra) and applying the principle that the plaintiff is the dominus litis, in the similar facts and circumstances of the case, this Court observed and held that the question

of jurisdiction of the court to invoke to add a party who is not made a party in the suit by the plaintiff shall not arise unless a party proposed to be added has direct and legal interest in the controversy involved in the suit. It is further observed and held by this Court that two tests are to be satisfied for determining the question who is a necessary party. The tests are – (1) there must be a right to some relief against such party in respect of the controversies involved in the proceedings; (2) no effective decree can be passed in the absence of such party. It is further observed and held that in a suit for specific performance the first test can be formulated is, to determine whether a party is a necessary party there must be a right to the same relief against the party claiming to be a necessary party, relating to the same subject matter involved in the proceedings for specific performance of contract to sell. It is further observed and held by this Court that in a suit for specific performance of the contract, a proper party is a party whose presence is necessary to adjudicate the controversy involved in the suit. It is further observed and held that the parties claiming an independent title and possession adverse to the title of the vendor and not on the basis of the contract, are not proper parties and if such party is impleaded in the suit, the scope of the suit for specific performance shall be enlarged to a suit for title and possession, which is impermissible. It is further observed and held that a third party or a stranger cannot be added in a suit for specific performance, merely in order to find out who is in

possession of the contracted property or to avoid multiplicity of the suits. It is further observed and held by this Court that a third party or a stranger to a contract cannot be added so as to convert a suit of one character into a suit of different character.”

21. Similarly, the Hon'ble Apex Court in **Mumbai International Airport Pvt. Ltd. vs. Regency Convention Centre & Hotels Pvt. Ltd. & Ors., (2010) 7 SCC 416** has held that the plaintiff in a suit, being *dominus litis*, may choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief. A 'necessary party' is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the Court. If a 'necessary party' is not impleaded, the suit itself is liable to be dismissed. A 'proper party' is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in disputes in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided

against the plaintiff, will not make such person a necessary party or a proper party to the suit. The Hon'ble Apex Court has reiterated the principles of Order 1 Rule 10 (2) of CPC in the following manner:

"13. The general rule in regard to impleadment of parties is that the plaintiff in a suit, being dominus litis, may choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief. Consequently, a person who is not a party has no right to be impleaded against the wishes of the plaintiff. But this general rule is subject to the provisions of Order I Rule 10(2) of Code of Civil Procedure ('Code' for short), which provides for impleadment of proper or necessary parties. The said sub-rule is extracted below:

"Court may strike out or add parties. -(2) The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added."

14 The said provision makes it clear that a court may, at any stage of the proceedings (including suits for specific performance), either

upon or even without any application, and on such terms as may appear to it to be just, direct that any of the following persons may be added as a party: (a) any person who ought to have been joined as plaintiff or defendant, but not added; or (b) any person whose presence before the court may be necessary in order to enable the court to effectively and completely adjudicate upon and settle the question involved in the suit. In short, the court is given the discretion to add as a party, any person who is found to be a necessary party or proper party.

15. A 'necessary party' is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the Court. If a 'necessary party' is not impleaded, the suit itself is liable to be dismissed. A 'proper party' is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in disputes in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance."

22. In the present case, admittedly the claimant/respondent No.1 is the *dominus litis*. It is the choice of the claimant/respondent No.1 to array a party respondent. As rightly pointed out by learned counsel for the respondent that the claimant will be at risk in case the Tribunal came to the conclusion that the petition is bad on account of non-joinder of necessary party. He further submitted that the petitioner/insurance company cannot be permitted to implead the parties against the wishes of dominus lites. The claim petitions which have been instituted by the claimant/respondent No.1 have been filed against the Insurance Company and one Shri Prashant Aggarwal being owner-cum-driver of the vehicle.

23. As rightly pointed out by learned counsel for the claimant while referring to the provision of Section 168 of the Act, the tribunal can pass an award only against the insurer or owner or the driver and the tribunal has got no authority to pass an award against the third person in the claim petition. Therefore, in the considered opinion of this Court, the National Highway Authority of India and Director, KMC Construction Ltd. are neither necessary nor property parties. The petitioner has failed to prove and establish that how and in what manner the impleadment of said proposed respondents is necessary for the final adjudtion

and determination of the claim petitions. Learned Courts below have rightly determined the point in controversy and has rightly rejected the applications for impleadment.

24. The Hon'ble Apex Court in **Civil Appeal No.13801 of 2025, titled Shri Digant vs M/S. P.D.T. Trading Co. & Ors.**, while adjudicating the powers of High Court while deciding the petition under Article 227 of the Constitution of India has held as follows:

"22. The scope of High Court's jurisdiction under Articles 226/227 fell for consideration before a three-Judge Bench of this Court in Radhey Shyam & another v. Chhabi Nath & Ors. 1 This Court held that judicial orders of civil courts are not amenable to a writ of certiorari under Article 226, though they may be questioned in the supervisory jurisdiction of the High Court under Article 227 of the Constitution. The power under Article 227 is intended to be used sparingly and only in appropriate cases for the purpose of keeping the subordinate courts and tribunals within the bounds of their authority and correcting mere errors. exercised in cases The not for power occasioning may be grave injustice or failure of justice such as when (i) the court or tribunal has assumed a jurisdiction which it does not have, (ii) has failed to exercise a jurisdiction which it does have, such failure occasioning a failure of justice, and (iii) the jurisdiction though available is being exercised in a manner which tantamounts to overstepping the limits of jurisdiction."

25. Similarly, the Hon'ble Supreme Court in ***Sugarbai M. Siddiq and others vs. Ramesh S. Hankare (dead) by LRs***, **2001(8) SCC 477** has held as under:

"6. There can be little doubt that in an application under [Article 227](#) of the Constitution, the High Court has to see whether the lower courts/tribunal has jurisdiction to deal with the matter and if so, whether the impugned order is vitiated by procedural irregularity; in other words, the court is concerned not with decision but with decision making process. On this ground alone the order of the High Court is liable to be set aside."

26. The Hon'ble Apex Court in ***Garment Craft vs. Prakash Chand Goel***, **(2022) 4 SCC 181**, has held that while exercising power under Article 227 of the Constitution of India, the High Court does not act as a Court of first appeal. The relevant paras of the said judgment read as under:

"15. Having heard the counsel for the parties, we are clearly of the view that the impugned order is contrary to law and cannot be sustained for several reasons, but primarily for deviation from the limited jurisdiction exercised by the High Court under Article 227 of the Constitution of India. The High Court exercising supervisory jurisdiction does not act as a court of first appeal to reappreciate, reweigh the evidence or facts upon which the determination under challenge is based. Supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final finding is justified or can be

supported. The High Court is not to substitute its own decision on facts and conclusion, for that of the inferior court or tribunal. The jurisdiction exercised is in the nature of correctional jurisdiction to set right grave dereliction of duty or flagrant abuse, violation of fundamental principles of law or justice. The power under Article 227 is exercised sparingly in appropriate cases, like when there is no evidence at all to justify, or the finding is so perverse that no reasonable person can possibly come to such a conclusion that the court or tribunal has come to. It is axiomatic that such discretionary relief must be exercised to ensure there is no miscarriage of justice

16. Explaining the scope of jurisdiction under Article 227, this Court in *Estralla Rubber v. Dass Estate (P) Ltd.*² has observed:—“6. The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and explained in a number of decisions of this Court. The exercise of power under this article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains

uncorrected. It is also well settled that the High Court while acting under this article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or tribunal has come to."

27. In view of above exposition of law, this Court sees no infirmity or perversity in the impugned order.

28. In view of aforesaid discussions and for the reasons stated hereinabove, the instant petitions being devoid of any merit are dismissed, so also the pending application (s), if any, leaving the parties to bear their own costs.

25. Before parting, it is made clear that any observation made here-in-above shall not be taken as an expression of opinion on the merits of the main case and the same shall be adjudicated upon uninfluenced by any observation made here-in-above, which are only for the purpose of the instant petitions.

**(Romesh Verma)
Judge**

19th June, 2026
(vt)