

**IN THE HIGH COURT OF HIMACHAL PRADESH AT
SHIMLA**

**CMPMO No. 587 of 2025 a/w
CMPMO Nos.586 and 591 of 2025
Decided on 29th December 2025**

**CMPMO No.587 of 2025
Sh. Padam**

...Petitioner

Versus

Ajay Sautha and another

...Respondents

**CMPMO No.586 of 2025
Karan Singh**

...Petitioner

Versus

Ajay Sautha and another

...Respondents

**CMPMO No.591 of 2025
Tilak Kumar Budha and others**

...Petitioners

Versus

Ajay Sautha and another

...Respondents

Coram

Hon'ble Mr. Justice Ajay Mohan Goel, Judge

¹Whether approved for reporting? Yes

**For the petitioner(s): Mr. B.S. Chauhan, Senior Advocate,
with Mr. Sahil Sharma, Advocate, for
the petitioners(s) in all the petitions.**

For the respondents: Mr. Adarsh Sharma, Advocate, for respondent No.1, in all the petitions.

Mr. Raman Sethi, Advocate, for respondent No.2, in all the petitions.

Ajay Mohan Goel, Judge (Oral)

As common issues of fact and law are involved in these petitions and as similar orders have been passed by the learned Motor Accident Claims Tribunal, dismissing the applications filed under Order VI, Rule 17 of the Civil Procedure Code by the petitioners for amending the claim petitions, the cases were heard together and are being disposed of vide common judgment.

2. Brief facts necessary for the adjudication of these petitions are that all the petitioners herein have independently approached the learned Motor Accident Claims Tribunal for claiming compensation under Section 166 of the Motor Vehicles Act, on the ground that they had suffered injuries on account of rash and negligent driving of the deceased driver, namely, Dinesh, who was driving the offending vehicle bearing registration No.HP-63-7189 (Truck-Tipper), in which, the petitioners, who were labourers, were travelling.

According to the petitioners, on the ill-fated day, i.e., on 10.09.2023, at about 18.00 hrs., after the injured persons had completed their daily work and were returning to their residence in the ill-fated vehicle, its driver drove the same in a rash and negligent manner, as a result whereof, he could not control the vehicle and it rolled 400 to 500 meters down into a ditch. The accident took place on account of the rash and negligent driving on the part of the deceased driver. The petitioners received injuries, including grievous injuries and on this count, they have claimed compensation in the claim petitions.

3. During the pendency of these claim petitions, separate applications were filed by all the petitioners, in their respective claim petitions under Order VI, Rule 17 of the Civil Procedure Code, in terms whereof, an amendment was prayed for in the claim petitions.

4. For facts, this Court is referring to the pleadings in CMPMO No.587 of 2025, titled Padam versus Ajay Sautha and another.

5. It was averred in the application(s) filed under Order VI, Rule 17 of the Civil Procedure Code that the petitioners intended to amend the claim petitions by introducing therein the fact that the injuries were received by the petitioners while they were working as labourers at the site, where they were engaged for the construction of a retaining wall at Khera Kenchi, just beneath the main road, when the offending vehicle, which was being driven by the driver, namely, Dinesh in a rash and negligent manner, rolled down and crushed the labourers, including the petitioners.

6. The reasons spelled out in the application as to why the amendment was being prayed for was that the applicants were rustic labourers and they were not able to understand the language of the Court and the contents of the petitions were not read over and explained to the petitioners at the time when they appended their signatures to the claim petitions. It was also mentioned in the application that the petitions filed before the learned Tribunal were on the basis of an FIR, whereas, the fact of the matter was that the labourers were not occupants of the of the ill-fated vehicle, as they were deployed for the

construction of a retaining wall, beneath the main road and were crushed by the vehicle, when it rolled down the main road.

7. In terms of the impugned order, said application has been dismissed by the learned Tribunal by returning the following findings:-

"I have heard both the sides and have perused the record of the case file carefully.

It is observed that the petitioners had filed this petition under Section 166 of the Motor Vehicles Act, wherein. they had specifically pleaded in para No.10, para No.12 and para No 23 that the deceased was travelling in vehicle bearing No. HP-63-7198 (Truck-Tipper), which was being driven by one Dinesh in a rash and negligent manner. It was pleaded that driver lost control over the vehicle and vehicle went off the road and fell 400-500 meters down in a ditch and the injured received injury at the spot of the accident.

Thus, it is manifest that the case of the petitioner case was specific that injured on the alleged date, time and place was travelling in the accidental tipper, which fell into a ditch and caused injuries. Alongwith the petition, the petitioner/applicant also filed a copy of FIR No.83 of 2023, which was got registered by one of the co injured named Karan Singh, wherein also it was alleged that deceased was travelling in the tipper, which was being driven by one Dinesh driver in a rash and negligent manner and the tipper fell 400-400 meters below. Therefore, the petitioners had also placed reliance on this FIR alleging that the deceased was travelling in the tipper. Now, in the present application, the applicant is pleading that the he was constructing a retaining wall at Khashdhar just beneath the main road, when the tipper bearing No. HP-63-7198 being driven by the Dinesh in a rash and negligent manner rolled down on him and other labourers, causing injury to him and death of other labourers. I find that by proposed amendment the applicant is seeking to change the very alleged genesis and the manner in which the accident took place. Therefore, there is strength in the arguments forwarded by Ld. Counsel for the

respondent No.2 that if the proposed amendment is allowed, it will cause prejudice to the respondent No.2. It is also observed that respondent No.2 has already filed his reply, wherein he has taken a stand that the vehicle was being driven by the driver in breach of the conditions of the insurance policy as the deceased was travelling as a gratuitous passenger. I find that there is strength in the arguments forwarded by Ld. Counsel for the respondent No.2 that the proposed amendment will not only change the nature of the pleading, but also its character and it amounts to withdrawing the material facts and admissions. I also find that if the proposed amendment is allowed, it will change the alleged cause of action. The present petition is a claim petition under Section 166 of Motor Vehicles Act and although it is beneficial legislation, but the happening of the accident and the cause of death or injury is material and germane facts to be proved and amounts to the cause of action alleged. Now, the applicant is trying to introduce a totally new set of facts contrary to the earlier facts, which amounts to introducing a new cause of action that will definitely be detrimental to the contesting respondent and will prejudice him, since he has already disclosed his defence by filing his reply. No doubt, this application has been filed prior to the framing of issues, but Court has to consider the fact that whether the proposed amendment amounts to change of the cause of action or it merely completes the existing cause of action. To my mind, the proposed amendment sought by the applicant, amounts to change in the material facts involved in the petition and amounts to introduction of a new cause of action. In M. Revanna vs Anjanamma (Dead) By Lrs. AIR 2019 SUPREME COURT 940, the Hon'ble Apex court observed as under:-

"5. Leave to amend may be refused if it introduces a totally different, new and inconsistent case, or challenges the fundamental character of the suit. The proviso to order VI Rule 17 of CPC virtually prevents an application for amendment pleadings from being allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of the trial.

The proviso, to an extent, curtails absolute discretion to allow amendment at any stage. Therefore, the burden is on the person who seeks an amendment after commencement of the trial to show that in spite of due diligence, such an amendment could not have been sought earlier. There cannot be any dispute that an amendment cannot be claimed as a matter of right, and under all circumstances. Though normally amendments are allowed in the pleadings to avoid multiplicity of litigation, the Court needs to take into consideration whether the application for amendment is bona fide or mala fide and whether the amendment causes such prejudice to the other side which cannot be compensated adequately in terms of money."

To add further, the proposed amendment will also prejudice the respondent No.2, who has already disclosed his defence in his reply. The facts which the applicant wants to introduce constitute a fresh cause of action and cannot be allowed. This being so, I find that proposed amendment sought by the applicants cannot be allowed and hence, present application is dismissed. Application stands disposed of. It after doing needful be tagged with main case file."

8. Learned Senior Counsel for the petitioners argued that the impugned orders were not sustainable in the eyes of law for the reason that the learned Tribunal in the peculiar facts of the case, erred in not appreciating that as the petitioners were illiterate laboures, who had engaged a lawyer for filing claim petitions and as the claim petitions were filed on the strength of the contents of an FIR, in which, it was mentioned that the petitioners were travelling in the Tipper, which was not

factually correct, the amendment(s) should have been allowed, so that the actual position and the correct factual position as to how the accident took place was before the learned Tribunal. Learned Senior Counsel submitted that incidentally, after the incident took place, two FIRs were registered. One of such FIRs has been appended with the petition as Annexure P-2, i.e., FIR No.83 dated 11.09.2023, in which, the complainant is mentioned to be one Suresh, S/o Sh. Shyam Ji and the contents of the FIR mention that the labourers were travelling in the Tipper and the complaint was taken in writing from him. Learned Senior Counsel also drew the attention of this Court to another FIR, which was made available for the perusal of the Court, which is also FIR No.83, registered at the instance of one Karan Singh, S/o Tula Ram and in this, the contents are to the same effect qua the incident. Learned Senior Counsel however, submitted that the very fact that two FIRs. were registered and that too in the name of different persons, creates doubt in the mode and manner, in which, the incident was reported and this was the reason as to why the amendment in the claim petitions was prayed for by the petitioners. Learned

Senior Counsel submitted that as this extremely important aspect of the matter was ignored by the learned Tribunal while dismissing the application(s), the present petition(s) deserves to be allowed and the amendment prayed for deserves to be incorporated in the claim petition(s).

9. Mr. Adarsh Sharma, learned counsel appearing for respondent No.1, namely, Ajay Sautha, the owner of the vehicle, submitted before the Court that he has no objection, in case, the prayer of the petitioner is acceded to.

10. The petition has been seriously opposed by learned counsel appearing for the Insurance Company. He has submitted that there is no infirmity in the orders passed by the learned Tribunal and the intent of the parties is to introduce a completely different case by way of the amendment and this cannot be permitted in law. Learned counsel also drew the attention of the Court to Para-4 of CMPMO No.587 of 2025 and submitted that this creates great doubt with regard to the *bona fides* of the petitioners seeking amendment under Order VI, Rule 17 of the Civil Procedure Code. He submitted that as there were no illegalities in the order passed by the learned

Tribunal while dismissing the application filed under Order VI, Rule 17 of the Civil Procedure code, the present petition(s) deserves to be dismissed. Learned counsel also submitted that the grounds, which were urged before this Court, assailing the order passed by the learned Tribunal, were not even stated in the application filed under Order VI, Rule 17 of the Civil Procedure Code.

11. I have heard learned Senior Counsel for the petitioners and also learned counsel for the respondents and have also carefully gone through the impugned orders as well as the documents appended with the petition(s).

12. It is a matter of record that in all the claim petitions which stand preferred before the learned Tribunal, the stand of the claimants therein originally was that they were travelling in the ill-fated Tipper, which fell down on account of the rash and negligent driving of the driver, resulting in grievous injuries to the petitioners. In this backdrop, if one peruses the application filed under Order VI, Rule 17 of the Civil Procedure Code, as I have already observed hereinabove, the prayer of the petitioners therein was that they should be allowed to change

their version and be allowed to introduce the version that they were not sitting in the Tipper, when the Tipper fell down, but, they were working at the site performing their duty and were crushed by the Tipper, which fell down on account of the rash and negligent driving of its driver.

13. Order VI, Rule 17 of the Civil Procedure Code, *inter alia*, provides that the Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and such amendment shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. It is further provided in this Section that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. It is not in dispute that in the present cases, the applications for amendment of the claim petitions were filed before the commencement of Trial after response was filed by the respondent, more so, the Insurance Company to the claim petitions.

14. What weighed with the learned Tribunal while dismissing the application(s) filed by the petitioners herein was that the proposed amendment would not only change the nature of the pleadings, but, also its character, which amounted to withdrawing material facts and admissions. Learned Tribunal also held that the same would change the cause of action and though the Motor Vehicles Act was a beneficial legislation, but, as the manner, in which, the incident took place, was material and germane and had to be proved by the party which alleged it, the factum of the applicants trying to introduce a new case and a totally new cause of action would be detrimental to the contesting respondent and would cause prejudice to them.

15. This Court does not find any infirmity with the reasoning given by the learned Tribunal, in terms whereof, the application(s) filed under Order VI, Rule 17 of the Civil Procedure Code were dismissed.

16. It is a matter of record that in terms of the applications filed for amendment of the claim petitions, the petitioners intended to withdraw the earlier factual narration with regard to the occurrence of the incident by altering it from

the factum of them being seated in the ill-fated tipper to working at the site and being crushed by a tipper.

17. This Court does not concur with the submissions of the learned Senior Counsel that, merely because, the petitioners are illiterate labourers, therefore, they were not able to gauge as to whether the incident took place on account of the petitioners being passengers in the tipper or on account of the petitioners being crushed by the tipper. According to this Court, even a child, who has some sense, can very easily infer and narrate these facts.

18. As far as the arguments qua lodging of the two FIRs is concerned, it is completely irrelevant and immaterial for the adjudication of the application filed under Order VI, Rule 17 of the Civil Procedure Code in the present case.

19. Herein, it is not the case of the petitioners that the claim petitions were filed by them on the strength of the FIRs. Even otherwise, there was no occasion for the petitioners to have filed the claim petitions on the strength of the FIRs. for the reason that they were the first parties to the incident and it is not as if they were the legal heirs of someone else, who had

met with an accident.

20. The petitioners, thus being the party to the incident, obviously have to be believed as the persons having narrated the correct facts which are mentioned originally in the claim petitions.

21. Obviously, for some reason, there was a change in heart subsequently and this prompted them to file the application under Order VI, Rule 17 of the Civil Procedure Code, which has been rejected by the learned Tribunal. This change in heart was on account of the fact that the application for amendment was filed, after the Insurance Company had filed its response to the claim petitions, wherein, the Insurance Company took the stand of the petitioners were gratuitous passengers.

22. All this demonstrates that the filing of the applications under Order VI, Rule 17 was not a *bonafide* act but the petitioners intended to introduce a completely different story in the claim petitions as from the one, with which they had earlier approached the Court.

23. In this backdrop, this Court holds that the learned Tribunal has correctly dismissed the applications filed by the petitioners under Order VI, Rule 17 of the Civil Procedure Code, as the said applications did not meet the parameters of the statutory provisions of Order VI, Rule 17 of the Code of Civil Procedure and the intent of the petitioners was nothing but to fill up the lacunas in the cases.

24. Accordingly, in light of the above observations, these petitions are dismissed.

25. Pending miscellaneous applications, if any, also stand disposed of.

(Ajay Mohan Goel)
Judge

December 29, 2025
(*Vinod*)