

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 580 of 2015

1. Mohd. Shahabuddin S/o Late Kamrujma Aged About 47 Years R/o Vill Mominpura, Ambikapura P.S. Civil Line Ambikapur Revenue District Surguja Chhattisgarh
2. Mohd. Ashfaq Kamar S/o Late Kamrujma Aged About 42 Years R/o Village Mominpura, Ambikapura, P.S. Civil Line Ambikapur, Revenue District Surguja Chhattisgarh

---- Petitioners

Versus

1. Soniya (Minor Aged 12 Year) D/o Bhuvali Aged About 12 Years Represented Through Her Father Bhuvali S/o Birju Age 42 Yrs Village Govindpur Tahsil Ramanujnagar, P.S. Surajpur District Surajpur Chhattisgarh
2. The New India Insurance Company Ltd. Through Branch Manager D.O. Sada Complex, Transport Nagar, Korba, District Korba Chhattisgarh

---- Respondents

Shri Rakesh Kumar Jha, counsel for the petitioner/s.
Shri N.K.Malviya, counsel for respondent No.2 / insurance company.

Order On Board

17/09/2015

This petition, under Article 227 of the Constitution of India, has been preferred by the petitioners aggrieved by order dated 17/06/15, by which petitioners written statement, the amendment has been proposed. He submits that by this amendment, neither the defence earlier was withdrawn nor this amendment is inconsistent with the stand taken by the applicant in the pending proceedings.

2. Learned counsel for the petitioners submits that the petitioners have already taken a defence in their written statement that they were having valid permit to ply the vehicle No.CG 15A 5295 in the route through the location where accident took place. Only in order to make it more explicit as to on what circumstances, vehicle is to be plied on the given route stated in applicant's written statement, the amendment has been proposed. He submits that by this amendment, neither the defence earlier was withdrawn nor this amendment is inconsistent with the stand taken by the applicant in the pending proceedings.

3. Learned counsel for the Insurance Company submits that the defence of the Insurance company has been that there is breach of policy in as much as the vehicle in question was plying on a route other than the route in which permit was granted. It was further contended that the amendment which has been proposed by the petitioner only seeks to bring on record the pleadings showing the background in which, vehicle had to be plied in the route where the accident took place. He submits that this pleading is inconsequential. The effect of plying the vehicle on the route is required to be determined on the basis of the evidence that may be led by the parties with or without the defence of the owner of the vehicle.

4. After hearing learned counsel for the parties and going through the pleadings of the respective parties, I find that the amendment proposed by the petitioners is unnecessary and in the event of application being rejected, it does not adversely affect the defence which has already been taken by the petitioners. The petitioners in their written statement have pleaded that they had valid permit of plying vehicle on the route where accident took place. Once this defence has been taken, the petitioners are entitled under the law to lead oral and documentary evidence to establish their case and for that purpose, the amendment, as proposed, is not at all necessary.

5. With the said observation, the petition is dismissed.

Sd/-

Manindra Mohan Shrivastava
Judge