

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 971 of 2015

1. Abdul Salam S/o Late Mohd. Habib, aged about 48 years, R/o Manendragarh Khan Nursingh Home Ke Pass, Thana Manendragarh, District Koriya Chhattisgarh, (Owner)

---- Petitioner

Versus

1. Shadani W/o Somaru Singh, aged about 43 years, R/o Bada Bazar, Ward No.29, Chatrasingh Dafai, Chirmiri, Thana Chirmiri, Tahsil Khadgawa, District Koriya Chhattisgarh.....(Claimant)
2. Kalavati D/o Somaru Singh, aged about 29 years, R/o Bada Bazar, Ward No.29, Chatrasingh Dafai, Chirmiri, Thana Chirmiri, Tahsil Khadgawa, District Koriya Chhattisgarh.....(Claimant)
3. Mukesh S/o Somaru Singh, aged about 26 years, R/o Bada Bazar, Ward No.29, Chatrasingh Dafai, Chirmiri, Thana Chirmiri, Tahsil Khadgawa, District Koriya Chhattisgarh.....(Claimant)
4. Tilak Singh S/o Somaru Singh, aged about 23 years, R/o Bada Bazar, Ward No.29, Chatrasingh Dafai, Chirmiri, Thana Chirmiri, Tahsil Khadgawa, District Koriya Chhattisgarh.....(Claimant)
5. Vijay Kumar Yadav S/o Shri Jeevan Lal Yadav, aged about 35 years, R/o Kachi Dafai, Chota Bazar, Thana Chirmiri Tahsil Khadgawa, District Koriya Chhattisgarh.....(Driver)
6. United India Insurance Co. Ltd. Gurunanak Chowk, Budhar Road, Shahdol, District Shahdol Madhya Pradesh.....(Insurer)

---- Respondents

For Petitioner – Mr. Parag Kotecha, Advocate.

For Respondents 1 to 5 – None, service reports not received.

For Respondent No.6 – Mr. H.B.Agrawal, Senior Advocate along with Ms.Preeti Yadav, Advocate.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order on Board

08/03/2016

1. Service reports regarding other respondents not received and also there is no note as the other respondents are served or not.
2. It is submitted on behalf of the parties that present respondent, respondent No.6 is main contestant in the instant WP(227) as the relief as claimed is concerned with the present respondent only, hence, the matter may be disposed of by hearing both the parties present today.

3. With the consent of both the parties, the matter heard finally at the motion stage itself.

4. Facts in brief required for disposal of the instant WP(227) are that Claim Case No.44/2012 (Shadani and 3 others Vs. Vijay Kumar Yadav and 2 others) is pending before the Second Additional Motor Accidents Claims Tribunal, Manendragarh, District Korba under Section 166 of the Motor Vehicles Act, 1988 (in short 'the Act, 1988'). During trial of the said claim case, respondent No.6/Non-applicant No.3 had filed an application under Order 6 Rule 17 of the Code of Civil Procedure, 1908 (in short 'the Code') for amendment in the written statement for the fact that private Car No. CG 16ZD 0102 was ensured by the Non-applicant No.3 from 28-08-2012 till 27-08-2013 and the vehicle in question is a vehicle of model No.407, the number of the said vehicle shown as CG 16ZB 0102 and as there was interpolation in the policy, hence, due to mistake as the owner of the vehicle was same, fact regarding admission of the insurance committed. On the other hand, the vehicle in question in relation to the alleged accident was not ensured on behalf of the Non-applicant No.3. Hence, it is prayed for incorporation of the said amendment. The trial Court after due hearing allowed the said amendment application and listed the matter for applicants' evidence. Against the said order the petitioner/owner of the vehicle in question involved in the alleged incident filed the instant WP(227) and prayed that once the fact admitted, one cannot be allowed to amend the written statement in such a manner whereby the admission can be changed to denial of the said fact. It is submitted that as the order passed by the Court below is bad in law, against the settled law of procedure, hence, the said order be quashed and the application for amendment be rejected.

5. On behalf of respondent No.6, the petition is opposed orally.

6. Heard learned counsel for both the parties and perused the instant WP(227) and the documents annexed and also the impugned order dated 16-10-2015.

7. It is submitted on behalf of the petitioner that as per settled law, once a fact is admitted, the same cannot be denied. He further supported the other grounds taken in the petition and submitted that the impugned order may be quashed and the application for amendment be rejected. In his support learned counsel for the petitioner placed reliance on the matter of **Ram Niranjana Kajaria v. Sheo Prakash Kajaria and others**¹ wherein Hon'ble the Apex Court held that – Amendment in written statement – Resile from admission – Categorical admissions cannot be permitted to be withdrawn by way of amendment – Admission can only be clarified or explained by way of amendment and basis of admission can be attacked in a substantive proceedings.

8. For appreciation, Rule 240 of the C.G. Motor Vehicles Rules, 1994 (in short 'Rules, 1994') is relevant which is reproduced for relevance of the present matter :-

“Procedure to be followed by Claims Tribunal in holding enquiries.—Application of certain provisions of Code of Civil Procedure 1908; Save as otherwise expressly provided in the Act or these rules, the following provisions of the First Schedule to the Code of Civil Procedure, 1908 (V of 1908) namely, those contained in Order V, Rules 9 to 13 and 15 to 20, Order IX, Order XVIII, Rules 3 to 10, Order XVI, Rules 2 to 21, Order XVII, Order XXI and Order XXIII, Rules 1 to 3 shall apply to proceedings before a Claims Tribunal in so far as they may be applicable thereto.”

9. From perusal of the above Rule, it goes to show that Order 6 of the Code is not applicable for the matter in relation with claim cases. Also from perusal of the Rule 241 of the Rules 1994, it goes to show that the Tribunal may follow such summary procedure as it thinks fit in the matter. With this, the provision mentioned goes to show that the principles of Order 6 of the Code may not be strictly applicable except with the sound principles of natural

¹ 2015 AIR SCW 6475

justice. From perusal of the application for amendment as made in this behalf by respondent No.6/non-applicant No.3, it goes to show that earlier admission by respondent No.6 is clarified and explained by way of proposed amendment especially for incorporation of new para 5 after deletion of earlier para 5, also respondent No.6 prayed for amendment in the written statement upto sub-para D, it goes to show that by amendment application the respective insurance company clarified regarding the admission, it goes to show that respondent No.6 by way of proposed amendment is clarifying regarding earlier fact of admission because the number of two vehicles were the same but for minor changes in the registration and also the fact that owner of both the vehicle is the present petitioner. With this, in the considered view of this Court, firstly the provision regarding amendment in the pleadings as in the Order 6 Rule 17 of the Code is not strictly applicable, on the other hand, as respondent No.6 merely clarified regarding earlier admission which he is required to do so for total adjudication of the matter and also as insurance company it is his duty to defend him on the entire facts available for the proper adjudication of the matter, in the considered view of this Court, the case law cited is not applicable for the prayer of amendment from respondent No.6 and with this, the cited case law does not stand any way against the amendment as prayed.

10. In the considered view of this Court, the Court below while passing the detailed order dated 16-10-2015 not committed any mistake of law or of facts and as such, the order dated 16-10-2015 passed by the Court below requires no interference. Therefore, the petition filed on behalf of the petitioner is having no substance and the same is hereby dismissed at the motion stage itself.

11. Needless to mention that opportunity of the petitioner would be open to amend his written statement with the consequential amendment, if any. The petitioner may file consequential amendment, if he wishes so before the Court below; the same shall be disposed of as per provisions of law.

- 12. The petition dismissed.
- 13. No order as to cost.

Sd/-

(Chandra Bhushan Bajpai)
JUDGE