

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 768 of 2016**

- Shriram General Insurance Company Limited Through Branch Manager, Sitapura, Jaipur Rajasthan (Insurer Of Vehicle Pick Up No. C.G. 18 H 1382 Non- Applicant No. 3)

---- Petitioner**Versus**

1. Vandana Sirmour Wd/o Late Umesh Sirmour, Aged About 29 Years R/o Civil Lines, Parsa Bhader Road, Baloda Bazaar, Thana- City Kotwali, Baloda Bazaar, District Baloda Bazaar Bhatapara (Chhattisgarh) **(Claimant)**
2. Padmanath S/o Sonadhar Dom, Aged About 25 Years R/o Village Kirandul, Ward No. 04, Thana Kirandul, District Dantewada (Chhattisgarh) (Driver Of Vehicle Pick Up No. C.G. 18 H 1382 Non-Applicant No. 1)
3. Prakash Chand S/o Mishrilal Bhansali, Aged About 53 Years R/o Main Market, Kirandul, Thana Kirandul, District Dantewada (Chhattisgarh) (Owner Of Vehicle Pick Up No. C.G. 18 H 1382 Non-Applicant No. 2)
4. Ram Kumar Sirmour S/o Udho Prasad Aged About 59 Years R/o Ghorbhatti, Post Devartilda, Thana Kharora, Tahsil Arang, District Raipur (Chhattisgarh).....(Non Applicant No. 4)
5. Smt. Kamla Bai Sirmour W/o Ram Kumar, Aged About 57 Years R/o Ghorbhatti, Post Devartilda, Thana Kharora, Tahsil Arang, District Raipur (Chhattisgarh).....(Non Applicant No. 5)

---- Respondent

For Petitioner : Shri Sachin Singh Rajput, Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****21/12/2016**

1. In this petition under Article 227 of the Constitution of India the petitioner would assail the order passed by the Motor Accident

Claims Tribunal (for short 'the Claims Tribunal') rejecting its application under Order 6 Rule 17 CPC.

2. The dependents of deceased Umesh Sirmour have moved claim application under Sections 166 and 140 of the Motor Vehicles Act, 1988. The deceased was a Sub Inspector in the Chhattisgarh Police. He was taking an unknown dead body for postmortem examination in a pick up Van to the Government Hospital when the said vehicle met with an accident with Truck No.CG-15A/3189.
3. The amendment application has been moved for incorporation of the pleadings that the deceased was travelling in a transport vehicle which could not have been used as a vehicle for carrying dead body. The vehicle was otherwise used for Government purpose, therefore, the State of Chhattisgarh is a necessary party.^a
4. Admittedly, the application under Order 6 Rule 17 has not pleaded that despite due diligence the petitioner could not have averred the said pleadings in the original written statement. It is also admitted that in the claim petition the claimants have completed their evidence and it is now fixed for recording the evidence of non-claimants, therefore, the trial has begun.
5. In the matter of **Vidyabai and Others Vs. Padmalatha and Another** {(2009) 2 SCC 409}, the Supreme Court has considered the effect of proviso to Order 6 Rule 17 CPC to hold that unless jurisdictional bar under the said proviso is crossed by the party praying for amendment, the Court does not acquire jurisdiction to consider the amendment.

6. Since the petitioner has not made any pleading in the application as to why despite due diligence the averments could not have been made earlier, it has failed to cross jurisdictional bar, therefore, since the evidence has already begun and as a matter of fact, the claimants have already completed their evidence, the Claims Tribunal has not committed any illegality in rejecting the application.
7. The writ petition therefore deserves to be and is hereby dismissed.

Sd/-
Judge
(Prashant Kumar Mishra)

Barve