

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 629 OF 2016

MR. ROQUE PEREIRA AND ANR. ... Petitioners

Versus

MR. JANU KANKOLKAR AND 2 ORS. ... Respondents

Shri Prasheen Lotlikar, Advocate for the
Petitioners.

Shri Ashwin Costa, Advocate for Respondent Nos. 1
and 2.

Shri A.R.S. Netravalkar, Advocate for Respondent
No. 3.

CORAM:- C. V. BHADANG, J.

RESERVED ON:- 19th AUGUST, 2016

PRONOUNCED ON:- 20th AUGUST, 2016

ORDER:

On 04.07.2016, a notice for final disposal
was issued in this case. The petition is
accordingly heard and is being disposed of
finally.

2. The petitioners are the claimants before
the Motor Accident Claims Tribunal (Tribunal) in

Claim Petition No. 71/2014. That, petition is filed by the petitioners seeking compensation in respect of death of their son, in a vehicular accident. The age of the deceased at the time of the accident was said to be 15 years. The deceased was a student of Class-X.

The case made out in the petition is that the deceased was riding a Yamaha motor cycle bearing no. GA-01-F-5323, with his friend by name Vikas Paswan. The vehicle met with an accident in which, the minor son of the petitioners sustained injuries, to which he succumbed.

The petitioners claimed that the accident occurred due to the rash and negligent driving of the respondent no. 1.

3. The petitioners filed an application for amendment of the petition, on the basis of the statement of one Damodar Pednekar, during the course of investigation by the police. The petitioners now claim that the minor son of the petitioners, namely Ryan Pereira was a pillion

rider and Vikas Paswan was riding the motor cycle. That, application was rejected by the Tribunal on 23.02.2016, on the ground that the petitioners' cannot be permitted to withdraw an admission that their son, was the rider of the motor cycle, at the relevant time. The Tribunal found that permitting to withdraw such an admission, would result into nullifying the entire defence raised by the respondents. It appears that there was a second attempt to seek amendment of the petition, which was rejected on 07.06.2016, on the ground that the earlier application for amendment was already rejected. These are the two orders, which are the subject matter of challenge in this petition.

4. I have heard Shri Lotlikar, the learned Counsel for the petitioners, Shri Costa, the learned Counsel appearing for respondent nos. 1 and 2 and Shri Netravalkar, the learned Counsel appearing for respondent no. 3.

5. The learned Counsel for the petitioners has referred to the statement of Damodar Pednekar, in order to submit that there is material on record, to show that the deceased was a pillion rider on the motor cycle, which was driven by his friend. He submits that thus, the amendment ought to have been allowed, as it is necessary for the just decision of the petition. The learned Counsel submits that all such amendments, which are necessary for the disposal of the matter in issue, have to be allowed. Insofar as the aspect of withdrawal of an admission is concerned, reliance is placed on the decision of the Supreme Court in the case of **Panchdeo Narain Srivastava Vs. Km. Jyoti Sahay and Another, AIR 1983 SC 462.**

6. On the contrary, it is submitted by the learned Counsel for the respondent nos. 1 and 2 that it transpired during the investigation by the police, that it was the deceased who was riding the motor cycle and Vikas Paswan was the pillion rider. It is submitted that now, the petitioners

cannot be allowed to amend the petition, so as to contend that the deceased was the pillion rider. The learned Counsel pointed out that the petitioners are trying to extricate themselves from the said admission, in order to sustain the claim, which is not permissible. It is submitted that the issue of negligence and the fact that a minor was allowed to ride the vehicle, go to the root of the matter, as the claim is based on tortious liability, arising out of negligence. It is thus, submitted that a categorical admission made in the pleadings, cannot be allowed to be withdrawn. It is submitted that the impugned orders do not call for any interference.

Reliance is placed on the decision of the Supreme Court in the case **B.K. Narayana Pillai Vs. Parameswaran Pillai and Another, (2000) 1 SCC 712.**

7. The learned Counsel for the respondent no. 3 has supported the impugned order.

On behalf of respondent no. 3, reliance is placed on the decision of the Supreme Court in the

case of **Ram Niranjana Kajaria Vs. Sheo Prakash Kajaria and others**, 2015 10 SCC 203.

8. I have carefully considered the rival circumstances and the submissions made.

9. At the outset, it is necessary to mention that the decision in the case of **Panchdeo Srivastava** (supra) has been overruled by a three Judges Bench decision, in the case of **Ram Niranjana Kajaria** (supra) (see para 24 of the judgment in the case of **Ram Niranjana Kajaria**). Thus, the petitioners cannot conceivably place reliance on the said decision.

10. In the case of **Ram Niranjana Kajaria** (supra), the Hon'ble Apex Court after taking a survey of decisions holding the field, including in the case of **Nagindas Ramdas Vs. Dalpatram Ichharam alias Brijram and Others** ((1974) 1 SCC 242), **Gautam Sarup Vs. Leela Jetly and Others** (2008 (7) SCC 85) and a recent decision in the

case of **Revajeetu Builders and Developers Vs. Narayanaswamy and Sons and Others** ((2009) 10 SCC 84), has held that a categorical admission made in the pleadings, cannot be permitted to be withdrawn by way of an amendment.

11. In the case of **Nagindas Ramdas** (supra), it has been held that admissions, if true and clear, are by far the best proof of the facts admitted and admissions in pleadings or judicial admissions, admissible under Section 58 of the Evidence Act, made by the parties or their agents at or before the hearing of the case, stand on a higher footing, than evidentiary admissions. It has been further held that the former class of admissions are fully binding on the party that make them and constitute a waiver of proof.

12. In the case of **Revajeetu Builders and Developers** (supra), the Apex Court has deduced the following principles, while considering the prayer for amendment, in para 63 of the judgment:

"67. On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment.

(1) Whether the amendment sought is imperative for proper and effective adjudication of the case;

(2) Whether the application for amendment is bonafide or malafide;

(3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and

(6) As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

These are some of the important factors which may be kept in mind while dealing with application filed under Order VI Rule 17. These are only illustrative and not exhaustive."

13. Turning to the present matter, the case originally made out in the petition was that the deceased was riding the motor cycle and Vikas Paswan was the pillion rider. The petitioners now want to claim otherwise, on the basis of the statement of one of the witness namely, Damodar Pednekar. It is clear that the issue of negligence is pivotal, insofar as the liability to pay compensation is concerned, and thus the said averment in the petition, would constitute a categorical admission made in pleadings, which has a direct bearing on the basic issue involved in the petition. Thus, in view of the law laid down in the case of **Revajeetu Builders and Developers** (supra), the said categorical admission made in the pleadings cannot be allowed to be withdrawn.

That apart, the proposed amendment would constitutionally or fundamentally, change the nature and character of the case (see clause 5 of para 63 of the judgment in the case of **Revajeetu Builders and Developers**) .

14. I do not find that the impugned order suffers from any infirmity. The petition is without any merit and is accordingly dismissed, with no order as to costs.

C.V. BHADANG, J.

EV