

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6313 OF 2015

1. Mr. Rahul R. Salvi (Father of deceased),]
 2. Mr. Rohan R. Salvi (Brother of deceased).] ... Petitioners

Versus

Union of India, Through the General Manager.] ... Respondent

Mr. Sainand V. Chaugule for Petitioners.
 Mr. Chetan C. Agrawal for Respondent.

CORAM :- M. S. SONAK, J.
DATE :- JANUARY 13, 2016

P. C. :-

1. **Rule.**

2. With the consent of and at the request of learned Counsel for parties, Rule is made returnable forthwith.

3. The challenge in this petition is to the order dated 15/12/2014 made by the Railway Tribunal which reads thus :-

“15th Dec. 2014

*Def. to Re. : Ad. Amendment not
 allowed as Evidence has taken place. RE also closed. 4
 years have passed since OA filed 27/02/2015”*

4. Although, the Tribunal is right that an amendment should not normally be allowed once the evidence has concluded, in the facts and circumstances of the present case and looking to the nature of the amendment, it will be just and proper if leave is granted to amend the original application.

5. In para 6(b) of the original application, the petitioners had pleaded thus :-

“When the said train reached between Khar and Santacruz near KM 14/23 C and 14/22, he received jerk due to the speed of the train lost his balance and accidentally fell down from running train and sustained serious injuries”

6. By means of application seeking leave to amend, the petitioners seek to substitute para 6(b) in the original application with the following para :-

“When the said train reached between Bandra and Khar near KM 14/23 C and 14/22, he received jerk due to the speed of the train lost his balance and accidentally fell down from running train and sustained serious injuries”

7. From the aforesaid, it is clear that the petitioners, by means of amendment, seek to clarify that the accident took place between Bandra and Khar and not between Khar and Santacruz.

8. The learned Counsel for respondent has submitted that this change is crucial and if amendment is permitted at this stage, there will be prejudice to the respondent. The learned Counsel for respondent submitted that the documents on record make reference to some incidents between Bandra and Khar but not between Khar and Santacruz, as originally pleaded by the petitioner.

9. In my judgment, the aforesaid can hardly constitutes prejudice to the respondent. Besides, it is significant to note that even in the original pleading, the place of accident was clearly described as '*near KM 14/23 C and 14/22*'. Even in terms of the application seeking leave to amend, this description remains the same. Therefore, there is no question of any prejudice. This is not the occasion to decide whether the claim made by the petitioners is true or not and further, whether the same has any merit or not. However, even the respondent has not disputed the incident and the injury as such. In these circumstances, leave to amend ought to have been granted, rather than let the respondent create some hurdle, on the basis of some unintended inaccuracy in the original pleading.

10. Accordingly, the impugned order dated 15/12/2014 is set aside. The petitioners' application dated 05/09/2014 seeking leave to amend the original application is hereby granted. Necessary amendment to be carried out within two weeks from today.

11. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

12. All concerned to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)