

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.8001 OF 2016

Mashak Saipan Shaikh & Anr. Petitioners

Vs.

Smt. Kavita Maruti Patil & Ors. Respondents

Mr. Kalpesh U. Patil, Advocate for the Petitioners.
None for the Respondents.

Coram : **Smt. R.P. SondurBaldota, J.**
Date : 14th July, 2016

P.C.

1 This petition challenges the order dtd. 14th January, 2016, by which the Motor Accidents Claims Tribunal, Islampur, rejected the application at Exhibit 30, filed by the petitioners for amendment of their written statement. Respondents no.1 to 4 are the claimants, the relatives of the deceased in motor vehicle accident. Respondent no.5 is the insurer. Petitioner no.1 is the owner of the offending vehicle and petitioner no.2 is the driver.

2 The petitioners filed their common written statement on 12th March, 2015. Within a short time thereafter, i.e. on 9th October, 2014, the application for amendment of their written

statement came to be filed. It was opposed on behalf of respondents no.1 to 4 contending that the amendments sought are inconsistent with the pleadings in the written statement and would take away the admission therein.

3 As per the written statement, on the date and time of the accident, the offending vehicle was parked by the side of the road without any obstruction to the traffic on the road, with its parking lights on. The deceased was driving Hero Honda motorcycle with a pillion rider. The written statement alleges that, the deceased was not in a condition to drive the vehicle and he also did not have a valid driving license. He drove the motorcycle in a rash and negligent manner and dashed against the rear right side wheel of the tractor resulting into the accident, causing his death and injuries to the pillion rider. It was the contention of the petitioners that, the deceased, himself was responsible for the accident.

4 By way of amendments to this written statement, the petitioners proposed to add four paragraphs i.e. paras 10A, 10B, 10C and 10D. In the impugned order, the Tribunal has considered the proposed amendments in each of the paras. As regards para 10A, it has observed that by the proposed para 10A, the petitioners propose to set out a completely different story as regards the manner in which the accident took place. By the amendments, they seek to contend that before hitting the offending vehicle, the

motorcycle of the deceased slipped at the distance of about 10 ft. where it was dark and got dragged. In that slipping and dragging, the deceased sustained injury to his head and died. This amendment obviously could not have been allowed by the Tribunal.

5 As regards the amendment by way of proposed para 10B, additional description of the road which is sought to be given by the petitioners was held to be well within the knowledge of the petitioners at the time the written statement was filed. The Tribunal has held the proposed amendment as an after thought. It is also observed that the condition of the road can be seen from the panchanama of the spot of accident. In that case, denial of this amendment cannot cause any prejudice to the petitioners.

6 The amendments at para 10C and 10D are about the, manner in which the motorcycle was being driven and the condition of the deceased at the relevant time. This has already been alleged in the written statement filed. The motorcycle involved in the accident is owned by the pillion rider. The petitioners propose to contend that, the owner of the motorcycle is a necessary party to the claim petition. The Tribunal has rejected this amendment on the ground that it was not the case of the petitioner that there was any contributory and composite negligence. There is no infirmity in this part of the order also.

7 Mr. Patil, the learned advocate for the petitioner relies upon decision of the Apex Court in B.K. Narayana Pillai vs. Parameswaran Pillai and another, reported in (2000) 1 Supreme Court Cases, page 712 to submit that the application for amendments of the pleadings must be considered liberally and the Court should be generous in allowing the amendments to the written statement as the question of prejudice is less likely to operate in that event. Also, the defendant has a right to take alternative pleas in the defence. There can be no dispute about this as a general proposition. However, the same is subject to certain conditions which has been stated in the following terms in the very decision cited :-

. “All amendments of the pleadings should be allowed which are necessary for determination of the real controversies in the suit provided the proposed amendment does not alter or substitute a new cause of action on the basis of which the original lis was raised or defence taken. Inconsistent and contradictory allegations in negation to the admitted position of facts or mutually destructive allegations of facts should not be allowed to be incorporated by means of amendment to the pleadings. Proposed amendment should not cause such prejudice to the other side which cannot be compensated by costs. No amendment should be allowed which amounts to or relates (*sic* results) in defeating a legal right accruing to the opposite party on account of lapse of time. The delay in filing the petition for amendment of the pleadings should be properly compensated by costs and error or mistake which, if not fraudulent, should not be made a ground for rejecting the application for amendment of plaint or written statement.”

8 As noticed by the Tribunal in the impugned order, none of the amendments are necessary for determination of the real controversy between the parties. Part of the amendments are inconsistent and contrary to the defence already taken and part are unnecessary. Hence, the petition is dismissed.

(Smt. R.P. SondurBaldota, J)