

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.554 of 2019**

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Shailendra Singh, S/o Raj Kishore Singh, R/o Village-Uttar Tola, P.O.-Kala
Dumra, P.S.-Gautam Nagar, District-Siwan

... .. O.P. No. 1-Petitioner

Versus

Arun Kumar, S/o Late Jagdish Narayan Thakur, R/o Village-Sangrampur,
P.S.-Sangrampur, District-East Champaran

... .. Claimant-Respondent

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Appearance :

For the Petitioner : Mr. Rajendra Prasad, Advocate
For the Respondent : Mr.

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**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT**

Date : 13-09-2019

This application under Article 227 of the Constitution of India has been filed by the petitioner challenging the order dated 06.03.2019 passed by the learned Additional District Judge-8th-cum-Motor Accident Claim Tribunal, Gopalganj in M.V. No.14 of 2013 arising out of Complaint No.40 of 2014 whereby he has rejected the amendment petition filed under Order 6 Rule 17 of the Code of Civil Procedure (for short 'CPC').

2. It is submitted by the learned counsel for the petitioner that the amendment sought by the petitioner in the written statement was of formal nature, but without appreciating the facts and law involved in the case, the court below rejected the application dated 27.01.2019 filed by the petitioner under Order 6 Rule 17 of the CPC. He contended that only on the ground of



delay, an application under Order 6 Rule 17 CPC should not have been rejected by the court below.

3. Having heard learned counsel for the petitioner and perused the materials on record, I find that the respondent had filed Claim Case No.14 of 2013 before the court of District Judge-cum-Motor Accident Claim Tribunal, Gopalganj on the ground that he sustained injury in an accident, which took place due to rash and negligent driving of the tractor driver on 29.01.2011 at 7:30 a.m. on NH-28 near the house of one Sheo Balak Raut. The petitioner is the owner of the tractor. He appeared in the case and filed his written statement. He contended in his written statement that he had purchased the Messy Ferguson Tractor on 15.01.2011 from Saran Tractor and Automobile Tarwara More, Siwan, which was the authorized dealer of the tractor and had deposited all the expenses and the premium of the insurance in the aforesaid agency on the assurance that the tractor would be insured. He purchased trolley from Bettiah. When his driver proceeded with the tractor and trolley, the occurrence of offence took place. He has further contended in para 10 of the written statement that **later on** aforesaid tractor was insured by the agency with National Insurance Co. Ltd., Branch Siwan, near Babuniya Road. So, the



entire liability shifted on National Insurance Company Branch Siwan, which is the insurer of the said tractor.

4. After filing the written statement, evidence on behalf of the petitioner has concluded and at a much belated stage an application under Order 6 Rule 17 of the CPC was filed on behalf of the petitioner on 29.01.2019 wherein the petitioner contended that due to inadvertence some typing mistake had occurred in the written statement filed earlier. He further contended that the proposed amendments are of formal nature and nature of the case will not be changed.

5. The amendment sought for by the petitioner was contested by the claimant before the court below. A rejoinder was filed on his behalf wherein he categorically stated that when the petitioner had filed the claim petition, the said tractor was not insured. He also contended that the opposite party has filed the petition under Order 6 Rule 17 of the CPC after long delay even without pleading that in spite of due diligence, he could not have raised the matter before the commencement of trial.

6. Considering the nature of the amendment sought for and the stage of the case, the Motor Accident Claim Tribunal rejected the application filed on behalf of the petitioner under Order 6 Rule 17 of the CPC.



7. Order 6 Rule 17 of the CPC provides that the court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

8. The proviso to Order 6 Rule 17 creates an exception. It provides that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

9. Here, in the present case, the petitioner admits that the trial has commenced and all witnesses on his behalf has already been examined. In the written statement filed on behalf of the petitioner, it is stated that the tractor was purchased on 15.01.2011 and on the same day, the accident took place as a result of which claim case was filed. It is also stated that the tractor was insured by the agency later on.

10. Thus, the clear stipulation in the written statement is that on the date of purchase of the tractor, though the petitioner had paid the premium to the tractor dealer for insuring the vehicle, the same was not insured.



11. Apparently, the amendment sought for is not of formal in nature. It will change the nature of the suit. The Insurance Company is not a party to the suit. In case the amendment is allowed, the Insurance Company would be required to be impleaded as a necessary party. That apart, the petitioner did not even plead that in spite of due diligence, the petitioner could not raised the matter before the commencement of trial.

12. Having regard to the aforesaid facts, if the tribunal has rejected the application filed under Order 6 Rule 17 of the CPC, no illegality can be found with the order impugned.

13. The application is dismissed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	02.10.2019
Transmission Date	NA

