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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CM(M) 1120/2023

SANJAY KUMAR

.....Petitioner

Through: Mr. Ved Vyas Tripathi, Ms. Tanya Singh and Mr. Kuldeep Singh, Advocates.

versus

MOHD AIJAJ ALI & ORS.

.....Respondents

Through: Mr. Surendra Bharti and Mr. Ajay Kumar, Advocates for R-1 & 2.
Mr. Pankaj Seth with Ms. Khushi Sachdeva, Advocates for R-3.

+ CM(M) 1203/2023

GAYATRI & ORS.

.....Petitioners

Through: Mr. Ved Vyas Tripathi, Ms. Tanya Singh and Mr. Kuldeep Singh, Advocates.

versus

MOHD AIJAJ ALI & ORS.

.....Respondents

Through: Mr. Surendra Bharti and Mr. Ajay Kumar, Advocates for R-1 & 2.
Mr. Pankaj Seth with Ms. Khushi Sachdeva, Advocates for R-3.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER
01.10.2024

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1. Writ Petition under Article 227 of the Constitution of India has been filed against the Order dated 02.06.2023 vide which the Application under Order 6 Rule 17 CPC, filed by the



Petitioner/Claimant Sanjay Kumar was dismissed.

2. It is submitted that as per the FIR, Sanjay was the driver while deceased Dinesh was the pillion rider. However, inadvertently in the petition it was mentioned reversely viz. Dinesh was stated to be the driver while Sanjay was stated to be a pillion rider of the motorcycle.

3. The learned counsel on behalf of the Petitioner submits that in the FIR it has been clearly mentioned that it was Sanjay who was driving the motorcycle. There was a typographical error in the petition which was sought to be corrected by way of the Amendment application, which was dismissed by learned P.O vide the impugned order.

4. The learned counsel for the Insurance has taken an objection and has asserted that it amounts to withdrawal of admission in so much as during the trial when the petitioner found that Dinesh was not having a valid driving license, he has tried to change the entire factual matrix by asserting that it was Sanjay who was driving the motorcycle. This is a retraction of admission which could not be allowed. The learned P.O, MACT has rightly rejected the proposed amendment by way of the impugned order.

5. **Submissions Heard.**

6. The learned Presiding Officer while considering the application for Amendment observed that, a liberal view must be taken, but the proposed amendment has been disallowed on the ground that it amounts to retraction of admission. However, the proposed amendment is supported by the copy of the FIR wherein it was clearly recorded that Sanjay was driving the motorcycle. The FIR is prior in



time and there is no averment that the contents of the FIR being manipulated. It is evident that the claimant's assertion of there being a typographical error in the claim, is fully corroborated by the FIR.

7. In any case, the respondents can lead evidence to establish their contention about the person who was driving the motorcycle.

8. For the reasons stated above, the impugned Order dated 02.06.2023 dismissing the Application under Order 6 Rule 17 CPC is hereby set aside. The amendment as proposed by the petitioner is allowed. The learned Presiding Officer is hereby directed to take amended petition on record and to proceed in accordance with law.

9. Petitions stand disposed of.

NEENA BANSAL KRISHNA, J

OCTOBER 1, 2024

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