

SAINATH

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

WRIT PETITION NO. 16263 OF 2025

Anudha Anil Sawant

..Petitioner

Versus

Umesh Gopal Umarye & Anr.

...Respondents

WITH

WRIT PETITION NO. 12725 OF 2025

Anudha Anil Sawant & Ors.

..Petitioners

Versus

Umesh Gopal Umarye & Anr.

..Respondents

Mr. Rushabh S. Vidyarthi a/w Saumen Vidyarthi a/w Ms.
Ishita Bhole, Mr. Mohit Turakhia, for the Petitioners.
Mr. Rajesh Kanojia i/b Res Juris, for Respondent No. 2.

CORAM: N. J. JAMADAR, J.

DATE : 01st DECEMBER 2025

JUDGMENT:

1. Rule. Rule made returnable forthwith, and, with the consent of learned Counsel for the parties, heard finally.

2. The petitioners-applicants in Motor Accident Claim Petitions take exception to an identical order dated 07th August, 2025 passed by the learned Chairperson, Motor Accident Claims Tribunal ("the Tribunal"), Mumbai, whereby the Tribunal

allowed applications preferred by the Respondent No. 2-Insurer to amend the written statement.

3. Shorn of superfluities, the background facts can be stated as under:-

3.1 On 07th September, 2022, the petitioner in Writ Petition No. 16263/2025 – applicant in MACP No. 1488/2022 and Applicant No. 1 in MACP No. 1487/2022, was travelling in a car bearing registration No. MH 43 BE 8135 along with Mr. Anil Sawant, her husband, and the father of Applicant Nos. 2 & 3 and son of Applicant No. 4 in Application No. 1487/2022. The Respondent No. 1 is the owner of said car. It was alleged that, the driver of the said car was driving the said car in a rash and negligent manner and when it reached near Tandulwadi, Walwa, the driver lost control over the said car and collided with an unknown vehicle and, thereafter, the car turned turtle. Anil Sawant succumbed to the injuries sustained in the said accident. The petitioner also suffered injuries. Hence, the claim petitions for award of compensation for the death of Anil Sawant, and the injuries sustained by the petitioner, against the owner of the car and the insurer.

4. The Respondent No.2-Insurer resisted the claims by filing written statement. In para No 19 of the written statement, it was *inter alia*, contended that, an unknown driver of an unknown two wheeler dashed the vehicle in which the petitioner and the deceased were travelling, without observing traffic rules and regulations and, thus, there was contributory negligence.

5. After the parties led evidence, the Respondent No. 2 filed an application to amend the written statement so as to substitute the words, 'two wheeler' with the word 'vehicle', as it was nobody's case that the offending car had collided with a two wheeler. It was contended that, there was an inadvertent and typographical error in contending that the offending car collided with a two wheeler.

6. The applicants resisted the applications on the ground that, the amendment was sought at the fag end of the trial and, thus, the interdict contained in the proviso to Order VI Rule 17 of the Code of Civil Procedure, 1908 ("the Code"), came into play. On the merits, it was contended that, the amendment was sought by the Insurer as it was improbable that the offending car would turn turtle on account of collision with a two wheeler.

7. By the impugned order, the Tribunal allowed the application opining that the amendment sought was bonafide and it would not change the nature of the lis and the proposed amendment was necessary for a just determination of the claims.

8. Being aggrieved, the applicants have invoked the writ jurisdiction.

9. I have heard Mr. Rushabh Vidyarthi, the learned Counsel for the petitioners, and Mr. Rajesh Kanojia, the learned Counsel for Respondent No. 2, at some length. With the assistance of learned Counsel for the parties, I have also perused the pleadings and the material on record.

10. Mr. Vidyarthi would urge that, the Tribunal committed a grave error in law in allowing the application for amendment in the written statement, post recording of evidence of the defendant. The Tribunal lost sight of the fact that, the power to permit a party to amend the pleading, after the commencement of the trial, was circumscribed by the proof of due diligence. In the case at hand, a bald assertion was made that, the words ‘two wheeler’ were used instead of “vehicle” inadvertently, and there was a typographical error. No explanation was offered as

to why the proposed amendment could not be sought before the commencement of the trial.

11. Mr. Vidyarthi would further urge, the amendment was sought after an admission was elicited in the cross-examination of the witness for the Insurer that, in para no. 19 of the written statement, it was mentioned that the vehicle had collided with an unknown driver of the unknown two wheeler.

12. Mr. Vidyarthi made a strenuous effort to draw home the point that, the amendment would cause grave prejudice to the petitioners-applicants, as a collision with an unknown two wheeler improbablises the defence of the respondent. To buttress the submission that, an amendment cannot be allowed on the spacious plea of typographical error, Mr. Vidyarthi placed reliance on a judgment of the Supreme Court in the case of **J. Samuel & Ors. Vs. Gattu Mahesh & Ors¹** .

13. Per contra, Mr. Kanojia, the learned Counsel for Respondent No. 2 stoutly submitted that, it was nobody's case that, the offending vehicle had allegedly collided with an unknown two wheeler. Attention of the Court was invited to the contemporaneous documents, like F.I.R., the assertions in the

1 (2012) 2 SCC 300

claim applications and the evidence adduced by the petitioners wherein it has been consistently mentioned that, the offending vehicle had collided with an unknown vehicle. Secondly, Mr. Kanojia would urge, the contentions in para No. 19 of the written statement cannot be read in isolation. If construed as a whole, there is no admission in pleading that, the offending vehicle had collided with an unknown two wheeler. Thirdly, the applicants cannot draw any mileage from the fact that, the defendant's witness conceded in the cross-examination that it was mentioned in para No. 19 of the written statement that there was collision with an unknown two wheeler, as the witness has simply stated what was pleaded in the written statement.

14. Ordinarily, all amendments which are necessary for the determination of real question in controversy between the parties are required to be allowed, if the amendment does not cause prejudice to the adversary. The potentiality of prejudice to the adversary is required to be judged in the context of the facts of the case and the stage at which the amendment is sought.

15. In view of the proviso to Order VI Rule 17 of the Code, a party seeking amendment in the pleadings after the

commencement of trial is required to be satisfy the test of due diligence. As enunciated by the Supreme Court in the case of **Vidyabai & Ors. Vs. Padmalatha & Anr.**², the satisfaction as regards the existence of the circumstances on account of which the party could not have raised the matter before the commencement of trial, despite due diligence, is a jurisdictional fact.

16. Though the broad principles which govern the amendment in the pleadings apply to an application for amendment in the plaint and written statement, yet, an application for amendment in the written statement is required to be construed more liberally as the potentiality of prejudice, is relatively less. In the case of **Usha Balasaheb Swami & Ors. Vs. Kiran Appaso Swami & Ors.**³, the Supreme Court pointed out the distinction between a prayer for amendment in the plaint and that of the written statement, as under:-

“19. It is equally well-settled principle that a prayer for amendment of the plaint and a prayer for amendment of the written statement stand on different footings. The

2 (2009) 2 SCC 409

3 (2007) 5 SCC 602

general principle that amendment of pleadings cannot be allowed so as to alter materially or substitute cause of action or the nature of claim applies to amendments to plaint. It has no counterpart in the principles, relating to amendment of the written statement. Therefore, addition to a new ground of defence or substituting or altering a defence or taking inconsistent pleas in the written statement would not be objectionable while adding altering or substituting a new cause of action in the plaint may be objectionable”.

17. In the light of the aforesaid principles, reverting to the facts of the case, indeed the applicants approached the Tribunal with a case that, the offending vehicle had collided with an unknown vehicle driven by unknown driver before it turned turtle. The fact that, though petitioner - Anudha Sawant, was traveling in the said car, yet, such a case was put forth assumes significance as Anudha can be said to be a witness to the occurrence. In the contemporaneous documents as well as the pleadings and the affidavit of evidence, the applicants claimed

that, the offending vehicle had collided with an unknown vehicle driven by an unknown driver.

18. In the aforesaid context, the contentions in para No. 19 of the written statement are required to be noted. It reads as under:-

“This Insurer submits that as per the police papers filed by the applicant herself, one unknown driver of the unknown vehicle dashed the vehicle No. MH 43 BE 8135 from the rear side and caused the accident. Thus, the unknown driver of the unknown two wheeler without observing traffic rules & regulations contributed in causing and commissioning of accident. Therefore, he being tort feasor the applicant is not entitled to claim any compensation from this Insurer.

19. A plain reading of the aforesaid paragraph would indicate that the contention that the unknown driver of the unknown two wheeler without observing traffic rules and regulations contributed to the accident, as pleaded, is in the context of, and in relation to, the preceding statement that, as per the police papers an unknown driver of the unknown vehicle dashed the offending vehicle from the rear side and caused the accident.

20. Mr. Kanojia was justified in canvassing a submission that, the later part of para no. 19, which contains the words ‘unknown two wheeler’ cannot be read in isolation and torn out of context. It cannot be said with, an element of certainty that, the Respondent No. 2-Insurer had made a categorical statement of fact that, the offending vehicle had collided with an unknown two wheeler.

21. If viewed through the prism that, in none of the contemporaneous documents, pleadings and evidence adduced by the applicants, there is reference to the unknown two wheeler, the submission on behalf of the Respondent No. 2-Insurer that, the use of the words, ‘two wheeler’ instead of ‘vehicle’ was an inadvertent and typographical error carries substance.

22. Reliance placed by Mr. Vidyarthi on the judgment in the case of **J. Samuel & Ors. (supra)** does not advance the cause of the submission on behalf of applicants, as in the said case, the amendment was sought to be made with regard to readiness and willingness in a suit for specific performance of the contract and, in that context, the Supreme court ruled that, it was unable to accept that omission to plead readiness and

willingness in the light of the statutory requirement under Section 16(c) of the Specific Relief Act, was on account of a typographical error.

23. The matter can be looked at from a slightly different perspective. It is not an immutable rule of law that admission in pleadings are cast in iron. Admission in pleadings are not conclusive. They can be shown to be on account of inadvertence incorrect or even explained away. In the case of **M/s. Ganesh Trading Co. Vs. Moji Ram**⁴, the Supreme Court enunciated that, the errors in pleading are not incapable of being rectified so long as the amendment does not unjustifiably injure the rights accrued to the adversary. Para No. 4 of the judgment reads as under:-

“4. It is clear from the foregoing summary of the main rules of pleadings that provisions for the amendment of pleadings, subject to such terms as to costs and giving of all parties concerned necessary opportunities to meet exact situations resulting from amendments, are intended for promoting the ends of justice and not for defeating them.

4 (1978) 2 SCC 91

Even if a party or its counsel is inefficient in setting out its case initially the shortcoming can certainly be removed generally by appropriate steps taken by a party which must no doubt pay costs for the inconvenience or expense caused to the other side from its omissions. The error is not incapable of being rectified so long as remedial steps do not unjustifiably injure rights accrued.”

24. In the instant case, upon careful consideration of the contents of para no. 19 of the written statement (extracted above), it would be difficult to draw an inference that there was an admission that, the offending vehicle had collided with an unknown two wheeler. Therefore, in the totality of circumstances, the learned Chairperson of the Tribunal was justified in allowing the applications for amendment.

25. In the facts and circumstances of the case, the proviso to Order VI Rule 17 of the Code, may not operate as an impediment in allowing the amendment post commencement of the trial as

the amendment was essentially to correct an inadvertent mistake.

26. For the foregoing reasons, the petitions deserve to be dismissed.

27. Hence, the following Order.

::ORDER::

- I) The petitions stand dismissed.
- II) Rule discharged.
- III) No Costs.

[N. J. JAMADAR, J.]