

IN THE HIGH COURT OF HIMACHAL PRADESH
AT SHIMLA

CMPMO No.227 of 2006.

Date of Decision: 31st October, 2006

National Insurance Company Ltd.	Petitioner
Versus	
Smt. Shakuntla Verma and others	Respondents

Coram

The Hon'ble Mr. Justice V.K.Gupta, C.J.

Whether approved for reporting¹?

For the petitioner: Mr.Ashwani K. Sharma.

For the respondents: None.

V.K.Gupta, C.J. (Oral)

Notice was ordered to be issued on 22nd August, 2006. As per office report, the respondents have been served but no one appears on their behalf.

Heard Mr. Sharma, learned counsel appearing for the petitioner. I have also perused the record of the case, particularly, the copy of the FIR as well as the deposition of witnesses, who have appeared in the case. At the stage when the impugned order was passed by the learned Tribunal on 30th June, 2006, the case was already ripe for final arguments after the conclusion of the evidence of the parties. It was at this stage that application under Order 6

¹Whether the reporters of Local Papers are allowed to see the Judgment?

Rule 17, CPC, was filed by respondents No.1 and 2-claimants in the Claim Petition seeking amendment of para 24 of the Claim Petition. Para 24 of the Claim Petition as originally filed read thus:-

"That on 12.12.2002 deceased Pardeep Kumar was driving the above said car belonging to respondent No.1 from Shimla to Kasauli. At about 8.15 A.M. when car reached near Panch Parmeshwar Mandir at Deonghat the same car fell down from the road while the car was providing passage to private bus coming from Dharampur side towards Solan. As such, the accident arose out of use of Motor vehicle and petitioners who are legal heirs and dependants on the earning of deceased are entitled to claim compensation under Section 163-A of Motor Vehicles Act, 1988 and are entitled for compensation on stricture formula basis as provided in II Schedule."

Para 24 as had been sought to be amended read thus:-

"When Pardeep Kumar driving the car in question was providing passage to the private bus, the retaining wall/dungga supporting the road on the spot collapsed all of a sudden resulting in felling down of car from the road, the accident in question was an act of God and there was no negligence on the part of the deceased driver Pardeep Kumar in driving the car. The F.I.R. No. 376 dated 12.12.2004 under Section 279, 337, 304-A IPC was wrongly registered against the driver of the car as

such under the present facts and circumstances of the case the petitioners are entitled for the claim under Section 163-A of the Motor Vehicles Act.

The learned Tribunal apparently has erred in allowing the aforesaid amendment only on one ground and that is, that the amendment allowed would change the very nature of the case. Apart from the fact that the proposed amendment was sought to be introduced at a very belated stage, at the stage of arguments in the case, it completely changed the very complexion of the case, the very edifice of the accrual of the cause of action. Whereas in para 24 as originally pleaded the only ground relatable to the accident was that while the deceased was providing passage to a private bus coming from Dharampur side towards Solan, the Car which he was driving fell from the road, in the amended para 24 what was sought to be introduced is that while the passage was being provided to the bus coming from the opposite side, retaining wall/Danga supporting the road on the spot collapsed all of a sudden resulting in the falling down of the Car from the road. Apparently this new ground is clearly linked with an attempt by the claimants-respondents No.1 and 2 to salvage the deceased from any fault of rashness or negligence on his part as also it introduces a

ground, viz., collapsing of the retaining wall. This surely has completely changed the complexion of the case and has introduced a cause of action, which was not pleaded by the claimants in the Claim Petition as originally filed.

Actually a perusal of the evidence adduced in the case also suggests that it was never the contention of the claimants in the Claim Petition that the Car had fallen down because of the collapse of the retaining wall on the spot.

Under the circumstances, the learned Tribunal ought not to have allowed the amendment in para 24 of the Claim Petition.

This petition accordingly is allowed. The impugned order is set aside. Consequently the application filed by respondents No.1 and 2 under Order 6 Rule 17, CPC, shall stand rejected with all the consequences.

Record be sent back to the learned Tribunal immediately and forthwith.

CMP No.452/2006

In view of the disposal of the main petition, the present application is also disposed of.

31st October, 2006
(C)

(V.K.Gupta), C.J.